CONFIDENTIAL

Government of Madras

PUBLIC WORKS DEPARTMENT.

(Irrigation.)

Letter No. 652, 28th March 1938

Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel—Letter to the Resident in Mysore.

CONFIDENTIAL

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PUBLIC WORKS DEPARTMENT.

(Irrigation.)

Letter No. 652, 29th March 1938

Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel—Letter to the Resident in Mysore.

READ—the following papers :—

I

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, Madras, to the Secretary to Government, Public Works Department, dated 7th June 1937, No. 1808/36-B-14.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve Forest of the Kollegal taluk, Coimbatore district. After a short course in British limits it runs through Mysore territory for two or three miles before it joins the Honhole or Swarnavathi which in turn falls into the Cauvery.

2. There is a proposal to construct an anicut across the Hebbahalla and take a channel from it to feed six existing tanks (vide index map enclosed). The necessity for a scheme was felt so long ago as 1921. The proposal (estimated at Rs. 2,65,000) was however, abandoned in G.O. No. 559 I., dated 19th February 1929, on financial grounds.

3. The scheme has been revived now (but on a modest scale) to ensure adequate supply to a few tanks and avoid frequent remissions in the area irrigated by them. No increase of irrigated area is proposed. The Board of Revenue has in its Proceedings No. 907/36, dated 7th September 1936, accepted the proposal to excavate the supply channel (originally estimated to cost Rs. 14,500 and subsequently revised to Rs. 15,450) under the special accelerated and widespread programme of improvements to minor irrigation works as it will provide work for rural population and at the same time make the tanks efficient sources of irrigation. The anicut which will be an entirely new work will cost about Rs. 9,300 or Rs. 12,106 including centage and establishment charges, and will be built under a separate estimate. The complete scheme is expected to save a remission of about Rs. 1,560.

4. The point now in issue is whether the proposed anicut and supply channel to feed existing tanks can be constructed without reference to Mysore. The decision on this point rests on the interpretation of the relevant clauses of the 1924 and 1892 Agreements.

5. Clause 10 (xiv) of the 1924 Agreement provides that Madras may construct *new irrigation works* on '*Tributaries of the Cauvery in Madras*'. It is for decision whether this clause is applicable to an affluent of the Cauvery like the Hebbahalla, or whether the clause must be taken to refer only to 'tributaries running entirely in Madras'. An examination of the genesis of clause 10 (xiv) shows that the clause was introduced to meet the Madras claim that no restrictions should be placed on tributaries of the Cauvery entirely in Madras. Please vide G.O. Nos. 202-203 I., dated 10th June 1924, page 6,

paragraph 8, of demi-official correspondence, Part II, and also note in paragraph 2 on page 10 of the same, and paragraph 2 of letter, dated 8th January 1924, on page 15. If these notes are to be taken as expressing the intention of clause 10 (xiv) as finally drafted, the clause cannot apply to Hebbahalla which runs partly in Madras and partly in Mysore. If we go, however merely by the wording of the clause as it stands, it is possible to argue that the clause covers all affluents of the Cauvery whether flowing partly or fully in Madras. In this case, Madras is free to carry out the Hebbahalla scheme without reference to Mysore in much the same way as she proposes to do the Bhavani Project.

6. If it is decided that clause 10 (xiv) does not apply, there is no clause in the 1924 Agreement specifically applicable to such cases, except the first sentence of clause 10 (xiii) which throws us back on the 1892 Agreement. Rule VI of 1892 Agreement provides that rules I to V shall apply "as far as may be" to streams flowing from Madras into Mysore. Rule II of the Agreement lays down definite limitations on Mysore Government regarding works in Mysore territory. The limitations were prescribed for safeguarding existing irrigation in Madras. It seems therefore reasonable to hold that rule VI stipulates analogous rules with reference to existing irrigation in Mysore. The Superintending Engineer, Coimbatore Circle, however reports that at present there is no irrigation in Mysore under the Hebbahalla or the Swarnavathi below the confluence of the Hebbahalla. The original Mysore draft of the 1892 Agreement prescribed certain distance limits from the Mysore-Madras frontier above which Mysore operations would be under no restriction. But the final agreement drafted after a conference on 22nd May 1891, prescribes two schedules with specific geographical limits. It will therefore be difficult to derive any limits applicable to Madras, under rule VI, by analogy. We have therefore to apply rule II as it stands to the present case. The rule prescribes in the case of Mysore that

(i) No new irrigation reservoirs may be constructed on the Schedule A streams without the consent of Madras.

(ii) No new anicuts may be built on certain of the Schedule A streams without the consent of Madras.

(iii) No new reservoirs or new anicuts may be built without the consent of Madras on streams or catchments in Schedule B fully or upto certain specified points.

Neither Hebbahalla nor the Swarnavathi into which Hebbahalla falls is in Schedule B, but Swarnavathi (or Honhole) is in Schedule A and works on it will fall either under clauses (i) and (ii) above. Hence the point at issue narrows down to "whether item 14 of Schedule A of the 1892 Agreement refers only to the main stream Swarnavathi or whether its affluent Hebbahalla is also included in its scope."

7. I request reference to the words "*main rivers in Schedule A*" in rule II of the 1892 Agreement and to the inclusion as a separate item in Schedule A of "Yagachi" a tributary of the *Hemavati* and a *sub-tributary of the Cauvery*. In view of these, it seems difficult to contend that Schedule A is applicable to sub-tributaries of the Cauvery like the Hebbahalla. I invite reference in this connection to the remarks of the Hon'ble Mr. Stokes on page 3 of G O. No. 323 I., dated 11th June 1890, and the notes on page 3 in paragraphs 2 and 3 of G.O. No. 162 I., dated 18th February 1892, and the notes under "Cauvery catchment" on page 4 of the notes to the same Government Order. It should also be noted that the Schedule B deals with a number of small streams most of which may be considered to be tributaries or sub-tributaries of Schedule A streams. Schedule B contains however no tributaries or sub-tributaries of the Cauvery. In the circumstances it seems obvious that the streams referred to in the Schedule A of the 1892 Agreement are only the main streams so that a tributary like the Hebbahalla is not included under Schedule A. If this view is correct, Madras will be free to carry out the scheme on Hebbahalla without any reference to Mysore under rule VI of the 1892 Agreement.

8. The above interpretation is opposed to the interpretation of the term 'Cauvery and its tributaries' in paragraph 2 (*a*) of G.O. No. 1921 I., dated 4th July 1929. It is for consideration whether the inclusion of '*sub-tributaries*' in paragraph 2 (*a*) of G.O. No. 1929 is correct and if so, whether the position of Madras under rule VI of 1892 Agreement explained in paragraph 7 above will have to be modified. If Government's view is correct, and the view be interpreted to include sub-tributaries under Schedule A of the 1892 Agreement, it will be necessary for Madras and Mysore to obtain each other's consent for their schemes on sub-tributaries—Madras under clause IV of the 1892 Agreement and

Mysore under clause III of 1892 and 10 (viii) of the 1924 Agreement. If Madras does not in the circumstances obtain Mysore's consent to the scheme, Mysore may claim any action taken by Madras on the Hebbahalla as a precedent, and refuse to submit her schemes to Madras for scrutiny. If Madras is entitled to ask for this under the Agreement, Madras will lose more by the precedent than Mysore will. This is because our schemes on streams flowing into Mysore are so very few that the present one may almost be regarded as an exception.

9. I am of opinion that 'sub-tributaries' of the tributaries in Schedule A are definitely excluded from the restrictions laid down in the 1924 Agreement and that in any case, Madras rights on such sub-tributaries should rest entirely on the 1892 Agreement which seems definitely to exclude the sub-tributaries. Hence I think that Mysore's consent need not be obtained for the Madras Hebbahalla scheme.

10. There is another agreement to be considered. Clause 1 of the Agreement of 1933, vide G.O. No. 2796 I, dated 28th December 1933, provides for mutual intimation being given about certain classes of irrigation works which do not require the consent of the other party. The classes of works referred to in the clause are—

(i) repairs to irrigation reservoirs without increase of storage and ayacut,

(ii) repairs to existing anicut, and

(iii) construction of new anicuts, to *replace old anicuts.*

But as the scope of the mutual consent required under the 1892 Agreement does not extend beyond Schedule A streams and Schedule B streams and catchments, the scope of mutual intimation to be given by either Government of such works seems equally limited to the works on the scheduled streams and catchments.

If this view is correct, and it is accepted that Schedules A and B do not include sub-tributaries not specifically mentioned in the schedules, neither consent under the 1892 Agreement nor intimation under the 1933 Agreement to Mysore will be necessary and the question is easily solved.

If however the view is held that the 1933 Agreement applies to other than Schedules A and B streams, a position which does not seem justified, the proposed changes to the existing tanks would fall literally speaking under the definition 'Repairs to reservoirs' under rule I (3) of the 1892 Agreement. This view is however again open to question as in this case Madras will be building a new anicut to supply certain tanks from an altogether new source. This may put it out of the pale of a repair work and bring it under the definition of a 'New Reservoir' to which the 1933 Agreement does not apply. As a new reservoir, we shall then have the same old query to answer; whether Mysore's *consent* is necessary under the 1892 Agreement.

11. I am of opinion that in the circumstances explained, it is unnecessary either to obtain Mysore's consent or send intimation to Mysore of the Madras Hebbahalla scheme.

I request to be informed if Government accept these views as it seems possible to hold widely differing views in the matter. If Government agree, further action will be taken to proceed with the scheme. The channel will be excavated under the accelerated scheme and the anicut estimated for and executed separately.

II

Letter from M.R.Ry. Rai Bahadur N. NALLATHAMBI SARKARAI MANRADIYAR Avargal, Pattagar of Palayakottai, and President, District Board, Erode, to the Secretary to Government, Revenue Department, dated the 8th August 1937, D. Dis. No. 514/D.B./37.

The investigation of the scheme to construct a masonry anicut over the Hebbahalla river is said to have been going on since 1921 on the numerous petitions of Kollegal ryots that the Hampapuram group of tanks do not get proper supply from the Gundala Kalwa

channel. It has been stated that these tanks suffer from November onwards and this project is stated to be mainly intended to tide over that shortage period. The scheme is said to have been abandoned, having been found unremunerative. I understand further that the Government are of opinion that the Mysore Government is to be consulted in the matter, as the Hebbahalla joins the Honhole river just within Mysore State limits. I am told that this is based on a misconception, that the area in the Mysore State the Hebbahalla could serve is negligible, and that apart from which the area is not Mysore State proper but is a private property owned by the Jagirdar of Yelandur.

2. I request that the Government will be pleased to examine the whole question again, as it is an important one for the Kollegal landholders.

A copy of the District Board's Resolution in the matter is enclosed herein.

Copy to R. C. Morris, Esq., District Board Member, Honnametti Estate, Attikan Post (via) Mysore.

ENCLOSURE.

Proceedings of the Erode District Board, dated the 23rd July 1937.

Letter from R. C. Morris, Esq., District Board Member, dated the 11th May 1937, stating that the Government be asked to re-examine the Kollegal Hebbahalla Irrigation Project as it is a very important one for the Kollegal landholders.

Resolution No. 381.—Government may be addressed.

N. NALLATHAMBI SARKARAI MANRADIYAR,
President, District Board.

III

Memorandum No. 1743-D./37-4, P.W., dated 11th September 1937.

[Irrigation—Kollegal taluk—Hebbahalla Diversion Scheme—Letter from the President, District Board, Erode, D. Dis. No. 514/D.B./37, dated the 8th August 1937.]

The President, District Board, is informed that the matter will be considered and orders issued in due course.

W. SCOTT BROWN,
Secretary to Government.

To the President, District Board, Erode.

IV

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, Madras, to the Secretary to Government, Public Works Department, dated 19th November 1937, No. 1808/36-B-22.

[Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla diversion scheme—*Reference.*—Demi-official from the Secretary to Government, Public Works Department, No. 1743-D/37-3, dated 28th August 1937.

I have examined the case further and suggest that a reference to the Mysore Government is advisable and advantageous to Madras.

2. During my discussions with the Mysore Superintending Engineer towards the close of June on some outstanding questions in regard to the Krishnarajasagara, etc., I enquired if Mysore would have any objection to this Hebbahalla scheme. The Mysore Superintending Engineer said that if no Mysore irrigation was affected, there would be no objection, and promised to look into the matter when the papers were sent to him. As already reported in paragraph 6 of my letter No. 1808/36-B-14, dated 7th June 1937, there is no irrigation in Mysore under either the Hebbahalla below the proposed anicut site, or the Swarnavathi (Honhole) below the confluence of the Hebbahalla. Hence, there is not likely to be any objection from Mysore. If they agree to the scheme, it means they accept the principle that sub-tributaries also come under the scope of the 1924 Agreement, and that any works on sub-tributaries can be constructed only after the consent of the other Government has been obtained, and Madras can quote this as a precedent. Obtaining Mysore's consent now will practically have no repurcussion on Madras as there are no important sub-tributaries flowing through Madras which fall into scheduled streams in Mysore. There are however many such sub-tributaries in Mysore and if this principle is accepted, Mysore reservoirs on such sub-tributaries will be counted against 45,000 m.c.ft. [vide paragraph 2 (*a*) of G.O. No. 1921 I., dated 4th July 1929].

3. If, on the other hand, Mysore object, it will be better to know of their objection before the anicut is sanctioned and taken up for execution. In this case the repurcussions on Mysore will be great, as Madras can similarly object to Mysore tapping tributaries and sub-tributaries of schedule streams. Mysore are not at all likely to object.

4. Even *if Mysore diplomatically say that a reference to them is not necessary* the position of Madras will remain unaltered. Mysore will probably say this, but we do no harm by giving them an opening to make a mistake.

5. *If no reference is now made* to Mysore, it will mean that we accept the principle that when sub-tributaries of scheduled streams are tapped by one Government, the consent of the other Government is not necessary. This will certainly be quoted by Mysore as a precedent and may give scope to them for unfettered extensions of irrigation in future.

6. I would therefore suggest that the question be referred by Government to Mysore, before final orders are passed, as we have most to gain by getting the precedent established.

Telephonic message from the Secretary to Government, Public Works Department, to the Chief Engineer for Irrigation, Madras, dated the 11th January 1938.

[Hebbahalla scheme—Kollegal taluk—Coimbatore district—Your letter No. 1808/36-B-22, dated 19th November 1937.]

It is proposed to proceed with the work and give *intimation* to Mysore. Please send a short note describing the essential features of the work and containing such of the technical details as are absolutely necessary for transmission to Mysore—Compare the notes sent by that Government in regard to the Doddamalur tank and the Koralkunte tank—G.Os. Nos. 2062 I., dated 1st September 1936, and 2855 I., dated 11th December 1936.

VI

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, Madras, to the Secretary to Government, Public Works Department, dated the 19th January 1938, No. 1808/38-B-25.

I enclose a short note on the scheme and two copies of a map showing the proposals.

ENCLOSURE.

The Hebbahalla Diversion Scheme.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal taluk, Coimbatore district. After a short course in British limits, it runs through Mysore territory for about two or three miles before it falls into the Honhole or Swarnavathi, which, in turn, falls into the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal hole in addition to flow from their own catchment. Numerous petitions from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that a supplementary source should be provided to prevent yearly failure of crops.

Hence, to ensure better supply to these tanks and to avoid frequent heavy remissions, it is proposed to construct across the Hebba halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½′ × 3½′ each, with sill at 3·6′ below crest of anicut. This channel will be let into the course feeding the first tank, viz., Kottakere tank.

The catchment of the Hebba halla above the anicut site is 11·9 square miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area. It is understood that there is no irrigation in Mysore State either under the Hebba halla below the proposed anicut site or under the Honhole below the infall of the Hebba halla.

GOVERNMENT OF MADRAS

PUBLIC WORKS DEPARTMENT

(Irrigation)

No. 652.

From

K. RAMUNNI MENON, Esq., I.C.S.,

Secretary to Government,

Public Works Department.

To

THE HON'BLE THE RESIDENT IN MYSORE.

Dated Fort St. George, 29th March 1938.

SIR,

[Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.]

I am directed to say that the Government of Madras proposes to proceed with a scheme for the utilization of the waters of the Hebbahalla, a tributary of the Honhole (or Swarnavathi), which in turn is a tributary of the Cauvery. A brief note on the scheme is enclosed. I am to request that the Government of Mysore may be apprised of this and to say that this Government trusts there is no objection to the works being proceeded with.

I have the honour to be,

Sir,

Your most obedient servant,

K. RAMUNNI MENON,
Secretary to Government.

Enclosures :—One note and a blue print map.

Copy to the Chief Engineer for Irrigation, with reference to his letter No. 1808/38-B-25, dated 19th January 1938.

Board of Revenue.

ENCLOSURE.

The Hebbahalla Diversion Scheme.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal taluk, Coimbatore district. After a short course within the limits of the Government of Madras, it runs through Mysore territory for about two or three miles before it falls into the Honhole or Swarnavathi, whose waters join the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal hole in addition to flow from their own catchment. Numerous complaints from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that there has been constant failure of crops.

To ensure better supply to these tanks it is proposed to construct across the Hebba halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½′ × 3½′ each, with sill at 3·6′ below crest of anicut. This supply channel will be let into the course feeding the first tank, viz., Kottakere tank. The work will not adversely affect the interests of the Mysore Government. Work on the excavation of the supply channel was started in November 1937 under the special accelerated and widespread programme of improvements to minor works of irrigation and is in progress.

The catchment of the Hebbahalla above the anicut site is 11·9 square miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area.

CONFIDENTIAL

PUBLIC WORKS (IRRIGATION) DEPARTMENT.

NOTES CONNECTED WITH LETTER No. 652, P.W. (I.), DATED 29TH MARCH 1938.

[SUBJECT.—*Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.*]

From the Chief Engineer (Irrigation), No. 1808/36-*B*-14, *dated 7th June* 1937.

The Chief Engineer's letter explains the case fully and clearly, and the points for consideration are—

(*a*) whether the 1892 Agreement between Madras and Mysore—Schedule A—refers only to schemes on the main tributary Honhole (or Suvarnavathi), or also to its sub-tributary the Hebbahalla ;

(*b*) whether the case can be considered to fall under clause 10 (xiv) of the 1924 Agreement, having regard to both the intention and wording of the clause ;

(*c*) whether the position is affected by the interpretation of the term "Cauvery and its tributaries" given by Government in paragraph 2 (*a*) of G.O. No. 1921 I., dated 4th July 1929 ; and

(*d*) whether under the Agreement of 1933 intimation of the proposed works (anicut and channel) should be given to Mysore and their consent obtained.

2. *Point* (*a*) *above.*—Please see paragraphs 6 and 7 of the Chief Engineer's letter. It is obvious, that on a strict interpretation, the 1892 Agreement as it stands does not require the consent of Mysore to be obtained for the scheme. It has often been said by the Advocate-General that an agreement between high contracting parties should be interpreted literally, and it was on this ground that the Bhadra Anicut case was decided against this Government. Please see paragraph 6 on page 2 of Notes to G.O. No. 179 I., dated 22nd January 1934, which summarises the history of this case. The Mysore Government argued that because rule II (*b*) of the 1892 Agreement mentioned anicuts across streams Nos. 4 to 9 and 14 and 15 only and because the Bhadra is No. 3 in Schedule A of that Agreement, the consent of Madras was not necessary for the construction of an anicut across it. This contention was upheld by the Government of India. In the same way, this Government may now hold that only the main tributary the Suvarnavathi (or Honhole) is mentioned in Schedule A, and not its sub-tributary, the Hebbahalla. This will be paying Mysore in their own coin, and Sir Norman Marjoribanks once remarked that Mysore should be made to understand that "what is sauce for the gander is also sauce for the goose". The Chief Engineer's view at bottom of paragraph 7 of his letter may therefore be accepted.

P.M.M.—13-7-37.
W.S.B.—14-7-37.

3. *Points* (*b*) *and* (*c*) *above.*—It should be remembered in the first place that having Sir K. Srinivasa Ayyangar's scathing criticism of the 1892 Agreement fresh before them, this Government could not have intended to tighten their position further by imposing on themselves further restrictions under the 1924 Agreement. In paragraph 5 of his letter, the Chief Engineer states that, judged merely by the wording of clause 10 (xiv) of this latter Agreement, it is possible to argue that it covers all affluents of the Cauvery whether flowing partly or fully in the limits of this Presidency, and that, in this case, the proposed scheme can be carried out without reference to Mysore just as we intend to do in regard to the Bhavani Project. It is submitted that, even if the wording of the clause is taken into account, it cannot apply to Hebbahalla as the words "on the tributaries of the Cauvery in Madras" can only refer to those *entirely* in Madras limits. The case of Bhavani is different from Hebbahalla as the former lies entirely in Madras limits and is

Notes in G.O. Nos. 164 I., dated 15th May 1922, and 282 I., dated 21st November 1922.

specially mentioned in the clause. The reasons for holding the view that the consent of Mysore is not necessary (even under the proviso to the clause) in regard to the reservoir across the Bhavani is that the reservoir cannot in any way affect the supplies Mysore are entitled to under the 1924 Agreement since it will be situated below Mysore territory, and that records of the water level and regulation at the reservoir from the time it comes into operation will be available for examination when the question of the further division of the surplus comes up for consideration in 1974. The analogy of the Bhavani Project is therefore inapplicable to the Hebbahalla scheme. As, however, even under the wording of clause 10 (xiv) and its proviso, the consent of Mysore does not appear necessary for the reason that the clause does not refer to tributaries (or sub-tributaries) lying partly in Mysore and partly in Madras limits, and as, according to the Chief Engineer, the intention of the clause is not also to include such cases, it may be conceded that the clause need not be taken to apply to the present scheme. The interpretation given in G.O No. 1921 I., dated 4th July 1929, was given mainly with reference to the question whether Mysore can build new irrigation reservoirs or sub-tributaries so long as the limit of 110,000 acres was not exceeded, and referred only to sub-clauses (iv), (vii) and (xiii) of clause 10 of the 1924 Agreement. [No mention has been made of clause 10 (xiv) which is the one under discussion now.] Mr. Evans, with whose interpretation the Government agreed, stated that we "need not" object to storage reservoirs or sub-tributaries so long as the maximum storage corresponding to 110,000 acres was not exceeded, and that there appeared to be none in question at that time—see paragraphs 3 (*a*) and 8 on pages 9-10 notes to the Government Order. In any case, as the interpretation has not been communicated to Mysore and as there has been no case so far where its correctness was tested—Mysore constructing a reservoir across a sub-tributary without our consent not having arisen—it seems that the Government Order need not be considered in the present connection. The papers in G.O. No. 1408 I., dated 12th May 1930, may also be perused. The Chief Engineer's opinion in paragraph 9 of his letter may, in the circumstances, be concurred in.

Paragraph 1 on page 12 of G.O. No. 2628 (Confdl.), dated 14th November 1936.

Quite so. Again we take our stand on the literal wording.

W.S.B.—14-7-37.

Meaning that Madras has liberty under clause 10 (xiv) to construct the work in question.

W.S.B.—14-7-37.

P.M.M.—13-7-37.

W.S.B.—14-7-37.

4. *Point* (*d*) *on page* 1 *ante*.—It will be seen from the papers in G.O. No. 219 I., dated 26th January 1935, that the intention was to apply clauses 1 and 10 of the 1933 Agreement only to the cases to which the 1892 Agreement applies, and it is also clear from the second sentence of clause 1 of the former Agreement that the intimation is to be given only in regard to the cases falling under the latter Agreement. Further, as has been pointed out in the last sub-paragraph under paragraph 10 of the Chief Engineer's letter, the works proposed on the Hebbahalla are in the nature of new works beyond the scope of the 1933 Agreement. The Chief Engineer's conclusion in paragraph 10 of his letter that neither consent under the 1892 Agreement nor intimation under the 1933 Agreement will be necessary seems therefore correct. It is observed that Mysore have not so far established a 'prescriptive right' under the Honhole (or Suvarnavathi) of the Hebbahalla below the confluence of the latter as at present there is no irrigation in Mysore limits under these streams. Under the proposed Madras scheme also, there is to be no extension of irrigation under the tanks fed by the new channel.

W.S.B.—14-7-37

5. In view of what has been stated in the foregoing paragraphs, the Chief Engineer's conclusion in paragraph 11 of his letter seems logical and correct. As regards the agreement in paragraph 8 of his letter that Madras's action in respect of the Hebbahalla may be taken as a precedent by Mysore, it is submitted that Mysore have not failed to exploit the drawbacks in the 1892 Agreement to their advantage (as the Bhadra anicut instance fully proves) and there is atleast good authority for maintaining that it is not permissible to go behind the explicit terms of the Agreement. The 'explicit terms' re in this rare instance favourable to Madras, and the advantage should not, it appears, be surrendered. From the note in paragraph 3 above, it is however clear that the question whether sub-tributaries are included in the 1924 Agreement is one on which it is desirable to have legal opinion as the matter is bound to crop up sooner or later in relation to Mysore's activities. This was suggested by the Chief Engineer, but brushed aside by Government in 1929.

P.M.M.—13-7-37. B

A

6. The file may be sent to Revenue and Legal for remarks on the views of the Chief Engineer and on **A** on the previous page.

).V.K.—10-7-37. P. MADHAVA MENON—13-7-37.

B The note above puts the case rather more clearly than the letter in the current file. Madras seems clearly entitled to stand on the letter of the agreements and I agree with the conclusions in the note.

W. SCOTT BROWN—14-7-37.

REVENUE DEPARTMENT.

This department may agree with the Public Works Department Secretary. The file may be passed on to the Legal Department.

K.R.M.—25-7-37.

M.V.M.—19-7-37. T. M. S. MANI—22-7-37.

K. RAMUNNI MENON—23-7-37.

LEGAL DEPARTMENT.

In paragraph 5 of his letter the Chief Engineer raises the question whether "tributaries" in the expression "tributaries of the Cauvery" occurring in clause 10 (xiv) of the 1924 Agreement mean "tributaries running entirely in Madras". The Chief Engineer's letter refers to two places in the correspondence between Madras and Mysore in which the negotiations which led to the agreement appear to show that the intention was to safeguard the rights of the Madras Government to irrigation in respect of tributaries lying entirely within their territories. The first of these references no doubt refers to tributaries situated in Madras territory, but the second and later reference which occurs in a note by Mysore refers to such tributaries as take *their sources entirely in Madras territory* and will consequently include tributaries which take their rise in Madras and subsequently flow into Mysore. Apart from this, we cannot, as pointed out in the note of the Public Works Department, rely upon the preliminary negotiations which led to the agreement when construing it. Under clause 10 (xiii) of the agreement, the right of the Mysore Government to construct new irrigation works on the "*tributaries of the Cauvery in Mysore*" not included in Schedule A of the 1892 Agreement has been completely safeguarded. The right of the Mysore Government has not been restricted by reason of the fact that the construction of such works on the tributaries must ultimately affect the supply of water which this Government will get from the Cauvery. Similarly, there seems to be no reason why the fact that a tributary begins in Madras and ultimately flows into the Cauvery in the Mysore State, should be held to place a restriction on the rights of this Government to utilize the waters of the tributary. The two rights conferred on the Mysore and the Madras Governments by clauses 10 (xiii) and 10 (xiv) respectively, couched as they are in the same language, must be deemed to be of the same amplitude. It follows that the right of constructing irrigation works possessed by Madras under clause 10 (xiv) cannot be limited by reason of the fact that the tributary flows into Mysore and thence joins the Cauvery.

2. The question has also been raised by the Chief Engineer whether the expression "tributary" in the 1924 Agreement includes "sub-tributaries". We have to bear in mind the fact that the Agreements of 1892 and 1924 need not necessarily have employed the expression "tributary" in the same sense. Each of the instruments must be construed primarily with reference to its own terms. So far as the 1924 Agreement is concerned, it is clear that the right conferred by clause 10 (xiii) on the Mysore Government includes a right to construct new irrigation works not only on the tributaries *not* included in Schedule A, but also on the sub-tributaries of such tributaries. Similarly, the right conferred by the latter portion of clause 10 (xiv) on the Mysore Government to construct a storage reservoir on one of the tributaries of the Cauvery in Mysore must be deemed to be exercisable not only in regard to a tributary but also in respect of a sub-tributary. As pointed out in G.O. No. 1921 I., dated 4th July 1929, the right of this Government will not in any way be affected by reason of the fact that the construction takes

M place on a sub-tributary rather than on a tributary. It could hardly have been the intention to distinguish between the two cases and to confer in respect of a tributary a right which it was intended to deny in respect of its sub-tributary. Again, under clause 10 (iv) of the 1924 Agreement, the Mysore Government are at liberty to carry out

future extensions of irrigation " under the Cauvery and its tributaries " to the extent of 110,000 acres. Here again, read with clause 10 (xiii), it is clear that clause 10 (iv) applies (*a*) to the Cauvery, (*b*) its tributaries included in Schedule A, and (*c*) the sub-tributaries of the tributaries included in Schedule A. The rights of the Mysore Government have been absolutely safeguarded only in regard to the tributaries not included in Schedule A to the 1892 Agreement and the sub-tributaries of such tributaries. The right conferred by clause 10 (iv) must be deemed to apply to all other tributaries and sub-tributaries which are not within the scope of clause 10 (xiii). It could not have been the intention to permit an unlimited right of irrigation to the Mysore Government both in respect of—

(i) the sub-tributaries of the tributaries *not mentioned* in the 1892 Agreement, and

(ii) the sub-tributaries of the tributaries *mentioned* in the 1892 Agreement.

Just as a reasonable construction of clause 10 (xiii) requires us to include sub-tributaries, so also a reasonable construction of clauses 10 (iv) and (vii) must be deemed to include a reference to sub-tributaries. This is consistent with the interpretation adopted by this Government in 1929, namely, that the limitation of the extension of irrigation to 110,000 acres must apply not only to tributaries but also to the sub-tributaries of the Cauvery. This Government are concerned with the total extent of irrigation and not with where the irrigation takes place, whether under a tributary or under a sub-tributary.

It seems to be advantageous to this Government to proceed on the footing that the
E reference to a tributary includes a sub-tributary in all the clauses of the Agreement of 1924.

3. It can hardly be contended that the Agreement of 1924, merely because it is supplementary to the Agreement of 1892, must be deemed to apply only to the tributaries and sub-tributaries which are mentioned in the latter agreement. Clearly clause 10 (xiv) which refers specifically to the Bhavani, Amaravathi and Noyil refers to tributaries which are not referred to in the 1892 Agreement at all. We have therefore to consider the 1924 Agreement without importing into it a limitation as to its scope, viz., that it covers only the ground covered by the 1892 Agreement.

4. This department would therefore consider that clause 10 (xiv) applies to tributaries flowing into Mysore from Madras and that it applies not only to tributaries but also to sub-tributaries.

5. If however this view is not correct, that is, if we assume that the 1924 Agreement does not specifically apply to sub-tributaries, we have to examine what the position is under the 1892 Agreement. For the reasons stated by the Chief Engineer, namely, that one sub-tributary—the Yagachi—has been specifically included in Schedule A to the Agreement, while a number of sub-tributaries and minor branches have been specifically referred to in Schedule B, it is difficult to sustain the view that the 1892 Agreement applies to sub-tributaries which have not been specifically included in either of the Schedules. The specific reference to " main rivers " in rule II of the 1892 Agreement is also consistent with the view that sub-tributaries are not included within its scope. This Government thus appear to be free of any of the restrictions imposed by the Agreement of 1892 in the case of the Hebbahalla as the Agreement does not apply to it. This department therefore agrees with the view expressed in paragraph 7 of the Chief Engineer's letter, viz., that Madras is free to carry out the scheme on the Hebbahalla as proposed, without any reference to Mysore under rule VI of the 1892 Agreement. It is presumed that rule VI applies only to the streams in Schedules A and B and that it has no application to streams which are not included in either of the Schedules

6. With reference to paragraph 8 of the Chief Engineer's letter, it may be pointed out that the Government Order of 1929 only interpreted the Agreement of 1924 and not the Agreement of 1892. There is therefore no question of inconsistency between paragraph 7 of the Chief Engineer's letter and the interpretation in paragraph 2 (*a*) of the Government Order of 1929.

7. With reference to the Chief Engineer's statement in paragraph 8 of his letter that Mysore may claim any action taken by Madras on the Hebbahalla as a precedent, it may be pointed out that Mysore are bound by clauses 10 (iv), (vi), (vii) and (viii) of the Agreement of 1924. If the expression " tributaries " in those clauses includes sub-tributaries as urged in this note, the Mysore Government would be bound to give information to this Government as regards the extension of irrigation, particulars of reservoir schemes, etc. Further, the rights of the Mysore Government will be limited to a total irrigation of 110,000 acres under the Cauvery and the tributaries included in Schedule A of the 1892 Agreement and the sub-tributaries of such tributaries. It does not therefore appear that Madras will lose anything by this interpretation.

8. With reference to paragraph 10 of the Chief Engineer's letter, this Department agrees that the Agreement of 1933 only implements the Agreement of 1892 and cannot therefore extend to ground not covered by it. If the argument in this note is correct that the 1892 Agreement does not cover the sub-tributaries of the Honhole, there will be no scope for the application of the 1933 Agreement.

9. To sum up, whether we regard clause 10 (xiv) of the 1924 Agreement as applicable to this case or not, the rights of this Government to proceed with the present scheme on the Hebbahalla will not be subject to any restriction whatever. Neither the consent of, nor intimation to, the Mysore Government will be necessary in any case. If however we regard the matter as covered by clause 10 (xiv) of the 1924 Agreement, that is to say, if references in that Agreements to tributaries of the Cauvery include a reference to sub-tributaries also, we will be on a better footing because we can then insist that the rights of the Mysore Government under clause 10 (iv) of the 1924 Agreement cover irrigation not only under the tributaries but also under the sub-tributaries of the Cauvery. Our rights under clauses 10 (vi) and (viii) of the 1924 Agreement will also be augmented in corresponding measure. This interpretation which was adopted by this Government in 1929 seems also to be more favourable to this Government and there seems to be no reason why we should not take our stand on it.

A

K. V. RAJAGOPALAN—12-8-37.

P. APPU NAIR—12-8-37.

PUBLIC WORKS DEPARTMENT.

The Chief Engineer, this Department and Legal are agreed that the consent of Mysore is not necessary for carrying out the scheme, though there is difference of opinion to a certain extent as to how each of the Agreements of 1892, 1924 and 1933 are to be interpreted. In view of the Chief Engineer's letter No. 1808/36-B-17, dated 2nd August 1937 (reminder not printed) it is submitted that he may be informed demi-official (confidentially) that he may start work and that the position *vis a vis* Mysore will be examined further at some leisure. A draft demi-official is accordingly submitted. After its issue, the points raised in the Legal department's note will be considered and noted on.

D.V.K.—19-8-37. M.S.K.—19-8-37. P. MADHAVA MENON—20-8-37.

W. SCOTT BROWN—23-8-37.

Y[AKUB HASAN]—28-8-37.

Demi-official from W. SCOTT BROWN, Esq., O.I.E., I.C.S., Secretary to Government, Public Works Department, to F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, dated Madras, the 28th August 1937, No. 1743-D/37-3.

[Irrigation—Coimbatore—Kollegal taluk—Anicut across Hebbahalla—Your letter No. 1808-36-B-14, dated 7th June 1937.]

The Government agree generally with the view that the consent of Mysore is not necessary for the proposed work. The exact implications of the Agreements of 1892, 1924 and 1933 in so far as they are applicable to the present case are however being examined further and formal orders will be issued in due course. Meanwhile you may proceed with the work.

From the President, District Board, Erode, dated 8th August 1937, *No.* 514/37.

Please see note above. No action appears necessary on the letter from the President, District Board, Erode. A copy of the formal orders proposed to be issued may be communicated to the President, District Board, or preferably, a reply may be sent *after* the issue of orders, that the work will be taken up for execution in due course.

D.V.K.—6-9-37. M.S.K.—6-9-37.

A reply may be sent to the President, District Board, acknowledging receipt of his letter, and informing him that the matter will be considered. After issue of final orders the President, District Board, may be informed that the work will be executed in due course.

P.M.M.—7-9-37.

A draft memorandum is submitted.

D.V.K.—9-9-37. M.S.K.—9-9-37. P.M.M.—10-9-37.

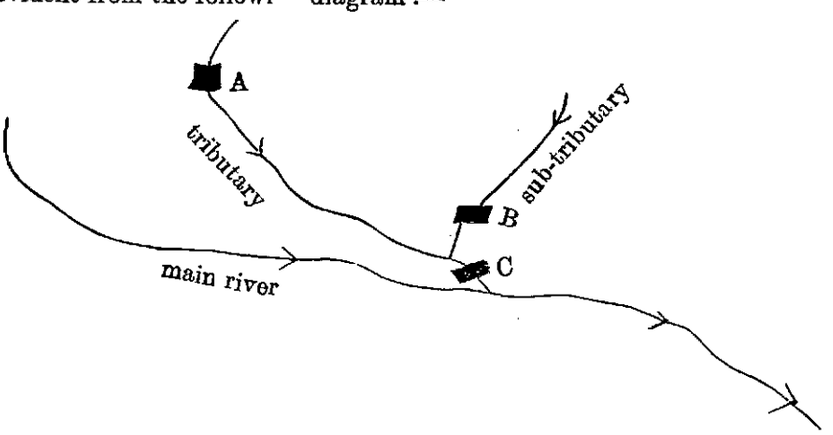
[Memorandum issued as No. 1743-D/37-4, dated 11th September 1937.]

Please see the Legal Department's note on pages 3–5 *ante*. The arguments contained therein are dealt with below.

2. *Paragraph* 1 *on page* 3 *ante*.—The conclusion of Legal may be accepted as it is based on a literal interpretation of the two clauses 10 (xiii) and 10 (xiv) of the 1924 Agreement. It is unnecessary to consider whether the framers of the Agreement had anything else in their mind as we have to go by the wording of the clauses. (This is so far as *tributaries* only are concerned. Sub-tributaries are not explicitly mentioned.)

3. *Paragraph* 2 *on pages* 3–4 *ante*.—Legal observe that the fact should be borne in mind that the Agreements of 1892 and 1924 need not necessarily have employed the expression "tributary" in the same sense and that each of the instruments must be construed primarily with reference to its own terms. It is doubtful whether this view can be upheld when it has to be remembered that the 1924 Agreement has been interpreted to be *supplementary* to that of 1892. Sir K. Srinivasa Ayyangar did his best to omit reference to the 1892 Agreement when drafting the 1924 Agreement, and remarked "we cannot disguise from ourselves that we are in effect acting under the Agreement of 1892 in consenting to the construction of the Krishnarajasagara*". The Advocate-General said in connection with the Bhadra Anicut case that the 1892 Agreement was "ratified" in 1924. Mysore in their letter to the Government of India regarding the sharing of the Tungabhadra waters stated that the 1892 Agreement "was re-affirmed so recently as 1924 in the special Agreement apportioning the waters of the Cauvery and its tributaries". In the circumstances, it is atleast arguable whether the same expression could be interpreted differently in two Agreements which are supplementary to each other and whether in such a case the intention should not have been made explicit in the later Agreement. Again the statement of the Legal Department that it is clear that the right conferred by clause 10 (xiii) on the Mysore Government includes a right to construct new irrigation works not only on the tributaries not included in Schedule A but also in the sub-tributaries of such tributaries, seems to be based on the arguments employed in G.O. No. 1921 I., dated 4th July 1929, viz., that the right of this Government will not in any way be affected by reason of the fact that the construction takes place on a sub-tributary rather than on a tributary, and that it could hardly have been the intention to confer a right in respect of a tributary which it was intended to deny in respect of a sub-tributary. It is submitted that so far as can be seen from the discussions leading the 1892 Agreement, the main considerations for the inclusion of the streams in Schedules A and B were the size of the stream (whether tributary or sub-tributary), and the quantity it contributed to the main river. It does not seem safe to assume that the construction of a reservoir or anicut on a sub-tributary cannot abstract more water than on the tributary itself. Much seems to depend upon the position of the irrigation work to be constructed as will be evident from the followi diagram :—

* See clause 10 (i) of the 1924 Agreement.



A reservoir at 'A' may not be so very detrimental to the supply in the main river as the reservoir at 'B' in a fair-sized sub-tributary, because the draw off at 'A' is compensated to a certain extent by flow from the catchment below it. The Legal Department's argument would be all right if the reservoir were at 'C.' If as stated by Legal, the right conferred on Mysore by the latter portion of clause 10 (xiii) applies to sub-tributaries also, then the position of this Government would seem to be worse as the scope of action for Mysore would indeed be very wide.

The Legal Department seek to compare and read together clauses 10 (iv) and 10 (xiii). The former purports to give Mysore certain rights to extend irrigation within the ambit of the 1924 agreement; clause 10 (xiii) gives separate rights outside the scope of the Agreement. The two are distinct.

As regards the observation that it could not have been the intention to confer on Mysore unlimited right in respect of sub-tributaries mentioned in the 1892 Agreement as well as those not mentioned in it, there is nothing extraordinary in this possibility when it is remembered that Mysore asked for an absolutely untrammelled right in respect of works which do not affect irrigation in Madras, and the Agreement in fact gives more than what Mysore were justly entitled to. Only such of the rivers and streams as were considered to substantially affect the supply to Madras irrigation were included within the scope of the Agreement. The conclusion that it seems advantageous to proceed on the footing that the reference to a tributary includes a sub-tributary in all clauses of the 1924 Agreement cannot it appears be accepted till it is examined how far this Government's rights will be affected *on the whole* by such an interpretation. The Chief Engineer will have to be consulted on this point. So far as clause 10 (xiv) is concerned, this interpretation will enable this Government to construct only the Hebbahalla Anicut and channel as there is no other work of the kind—see last sentence of paragraph 8 of the Chief Engineer's letter.

K

4. The arguments of Legal in paragraph 3 on page 4 have been noted on above. The inclusion of Bhavani, Amaravathi and Noyil in clause 10 (xiv) has a history behind it, and has never been satisfactorily explained. Please see pages 3–9 of Notes to G.O. No. 3080 I. (Confdl.), dated 7th December 1928.

5. The views expressed in paragraphs 5 and 6 of the Legal note may be accepted. They are in consonance with the view taken by this Department on pages 1 and 2 ante.

6. *Paragraph 7 on page 4 ante.*—As stated at K above, the Chief Engineer will have to be consulted how the balance of advantage lies. Please see in this connection Mr. Stoney's remarks on pages 12–13 of Notes to G.O. No. 1921 I., dated 4th July 1929, and the papers in G.O. No. 1408 I., dated 12th May 1930.

7. *Paragraph 8 on page 5 ante.*—The views may be accepted.

8. *Paragraph 9 on page 5.*—If the Chief Engineer is satisfied and can assure the Government that they are in a stronger position by accepting the interpretation that the expression "tributaries" in the 1924 Agreement includes sub-tributaries, there seem no reason why the interpretation should not be accepted till it is questioned by Mysore. The point for consideration is whether it is worthwhile to pursue the matter and force the issue. There seems no particular advantage in doing so. The worst that can happen is that Mysore may object to this Government having carried out* the work (Hebbahalla anicut and channel) without their consent on the assumption that such consent is necessary under the 1892 $\frac{\text{and}}{\text{or}}$ 1924 Agreement. It may then be simply stated that this Government did not think such consent was necessary under the Agreements with Mysore, and that, if it is considered that there will be material diminution of the supply in consequence, the quantity of water diverted from the Cauvery by the construction of the works on the Hebbahalla may be taken into account at the time the division of the surplus waters which each of the Governments would be entitled to in 1974 comes up for settlement—vide proviso to clause 10 (xiv) of the 1924 Agreement. This is more or less the line that has been adopted in the correspondence regarding the Bhavani Project.

K.R.M.—29-10-37.

The Chief Engineer has been asked to proceed with the work—see demi-official on page 5 *ante*.

9. If the above suggestion is accepted, a formal Government Order may be issued (confidentially) to the Chief Engineer to the effect that the Government are advised that under the terms of the Agreements with Mysore, the consent of that Government is not necessary for the work proposed by the Chief Engineer and that they (the works) may be proceeded with. A separate memorandum may be sent to the President, District Board, Coimbatore, saying that the Chief Engineer has arranged to carry out the work.

10. Revenue and Legal may see for remarks again.

D.V.K.—2-10-37. M.S.K.—7-10-37. P. MADHAVA MENON—27-10-37.

K. RAMUNNI MENON—29-10-37.

REVENUE DEPARTMENT.

This department may agree with the views of the Public Works Department contained in their note at pages 6–7 *ante*. The file may be passed on to Legal.

M.V.M.—8-11-37. T. M. S. MANI—9-11-37.

B. G. HOLDSWORTH—14-11-37.

LEGAL DEPARTMENT.

Action may be taken on the lines indicated in paragraph 9 of the note of Public Works Department above. This is in accordance with the conclusion reached in this Department's note at A on page 5 *ante*.

2. Whether we should now pursue the general question arising on the construction of 1924 Agreement, viz., whether the expression 'tributaries' occurring in it includes 'sub-tributaries' or not, is a matter for the Public Works Department. The question is obviously a contentious one on which it is possible to take more than one view. We need not force the issue now with Mysore, but it seems desirable to know where we stand. A reference may perhaps be issued to the Chief Engineer as indicated at K on page 7 *ante* as to whether or not the interpretation will be favourable to this Government's interests, especially as the question is likely to crop up again in future. It is clearly advantageous that Government should be aware of all the facts so that, if Mysore raises the issue, some definite stand can, if need be, be taken with reference to it.

K. V. RAJAGOPALAN—15-11-37.

P. APPU NAIR—16-11-37.

PUBLIC WORKS DEPARTMENT.

Please see the Legal Department note above and the letter from the Chief Engineer (Irrigation) since received. This Department suggested, and Revenue and Legal agreed, that we need not force the issue now with Mysore. In view of what the Chief Engineer now says, a reference to him as at K on page 7 *ante* seems unnecessary. For orders whether Mysore should now be addressed in the guise of asking their permission under clause 10 (xiv) of the 1924 Agreement for the construction of the anicut. (It cannot be an "intimation" under the 1933 Agreement as the work does not fall within the scope of the 1892 Agreement—see paragraph 8 on page 5 *ante*.)

2. It may be mentioned in this connection that the supply channel from the stream to feed a chain of tanks in Kollegal taluk has already been taken up for excavation under the special programme, and the anicut and head sluice are proposed to be carried out under a separate estimate which is under consideration as a Part II scheme for 1938-39. According to the Chief Engineer, the supply channel will not function effectively without the anicut and head sluice. The position will therefore be awkward if, by chance, Mysore take it into their heads to refuse consent straightaway, or simply prolong the matter by starting correspondence over the interpretation of the Agreements. The point may therefore be considered whether the Chief Engineer should not be asked to hold the work on the supply channel in abeyance for the present. As regards the anicut and head sluice, the Part II scheme proposals may be pushed through on the assumption that Mysore will consent to the work in the near future—before the end of the official year 1938-39 at any rate.

Compare in this connection paragraph 9 of Legal note on page 5 ante.

If it is decided to address Mysore now as suggested by the Chief Engineer, it will be wise to ask the Chief Engineer to hold up work on the supply channel.

P.M.M.—29-11-37.

The file may be circulated to Hon'ble Minister for Public Works, Hon'ble the Prime Minister and His Excellency the Governor for orders, but Legal may see the Chief Engineer's letter at pages 4-5 current file, for remarks if any, before circulation to Hon'ble Ministers and His Excellency. It seems unnecessary to trouble Revenue at this stage.

D.V.K.—25-11-37. M.S.K.—27-11-37. P. MADHAVA MENON—29-11-37.

I am inclined to agree with Chief Engineer that a reference may be made now to the Mysore Government

K. RAMUNNI MENON—29-11-37.

LEGAL DEPARTMENT.

In view of paragraph 5 of the Chief Engineer's letter, it seems desirable to make a reference to Mysore with regard to the execution of this scheme. In the event of the reply from Mysore being on the lines mentioned in paragraph 4 of the Chief Engineer's letter, the question will arise whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well. Public Works will no doubt consider this question at the proper time.

K.V.R.—30-11-37.

P.A.N.—1-12-37.

NOTES TO LETTER NO. 652, P.W. (I.), 29TH MARCH 1938.

PUBLIC WORKS DEPARTMENT.

This, and the linked * file, may be circulated to Hon'ble Minister for Public Works, Hon'ble the Prime Minister, and His Excellency the Governor for orders whether the consent of the Mysore Government should be asked for for the construction of the proposed anicut across the Hebbahalla.

A brief summarising note is put up.

D.V.K.—4-12-37. M.S.K.—6-12-37. P. MADHAVA MENON—6-12-37.

The note below is for orders.

K. RAMUNNI MENON—6-12-37.

NOTE.

The Hebbahalla is a stream which takes its rise in the reserve forests of the Kollegal taluk, Coimbatore district, and after a short course in British limits, it runs for about three miles through Mysore State before joining the Honhole or Swarnavathi, a tributary of the Cauvery.

2. The Chief Engineer (Irrigation) has proposed the construction of an anicut across the Hebbahalla and the excavation of a supply channel therefrom to feed a series of six tanks to improve the irrigation facilities of the Kollegal taluk which is very backward in this respect.

3. As the Hebbahalla is a sub-tributary of the Cauvery and runs partly in Madras and partly in Mysore, the question whether the consent of the Mysore Government is necessary to the construction of the anicut across it under the Agreements of 1892, 1924 and 1933 arises. The Chief Engineer has pointed out that as Schedule A to the 1892 Agreement mentions only the Honhole or Swarnavathi (and not its tributary the Hebbahalla) among the rivers the construction of anicuts across which requires the consent of Mysore, and as the Agreement is to be interpreted literally according to the opinion of the Advocate-General and the Government of India in the Bhadra Anicut case, the construction of the anicut in question does not require the consent of Mysore. The Legal Department have accepted this view.

As regards the 1933 Agreement, this is only an amplification of the 1892 Agreement in certain respects and cannot extend to ground not covered by it. As it has been held that Mysore's consent to the construction of the anicut is not necessary under the latter Agreement, it follows that such consent is not necessary under the former Agreement also.

The only question that remains for consideration is therefore whether such consent is necessary under the 1924 Agreement. Clause 10 (xiv) of this Agreement runs as follows:—

> "The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravati or Noyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir in addition to those referred to in clause (vii) of this Agreement on one of the tributaries of the Cauvery in Mysore, of a capacity not exceeding 60 per cent of the new reservoir in Madras.
>
> Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this Agreement, or the division of surplus water which, it is anticipated, will be available for division on the termination of this Agreement as provided in clause (xi)."

The point at issue arising out of this clause is whether the expression 'tributaries' occurring in it does or does not include 'sub-tributaries'. In 1929, the Government on a reference from the Chief Engineer gave a ruling in the affirmative. No legal opinion was, however, taken when this interpretation was given. The Legal Department are inclined to the opinion that as the interpretation given in 1929 seems more favourable to this Government (inasmuch as it will enable them to control the activities of Mysore on sub-tributaries also), there seems no reason why they should not take their stand on it.

The views of this Department on the question are extracted below :—

"If the Chief Engineer is satisfied and can assure the Government that they are in a stronger position by accepting the interpretation that the expression 'tributaries' in the 1924 Agreement includes sub-tributaries, there seem no reason why the interpretation should not be accepted till it is questioned by Mysore. The point for consideration is whether it is worthwhile to pursue the matter and force the issue. There seems no particular advantage in doing so. The worst that can happen is that Mysore may object to this Government having carried out the work (Hebbahalla anicut and channel) without their consent on the assumption that such consent is necessary under the 1892 and/or 1924 Agreement. It may then be simply stated that this Government did not think such consent was necessary under the Agreements with Mysore, and that, if it is considered that there will be material diminution of the supply in consequence, the quantity of water diverted from the Cauvery by the construction of the works on the Hebbahalla may be taken into account at the time the division of the surplus waters which each of the Governments would be entitled to in 1974 comes up for settlement—vide proviso to clause 10 (xiv) of the 1924 Agreement. This is more or less the line that has been adopted in the correspondence regarding the Bhavani Project."

Legal Department agreed that the question is obviously a contentious one on which it is possible to take more than one view, that the Government need not force the issue now with Mysore, but that a reference may be made to the Chief Engineer as it was desirable to know whether or not the interpretation will be *on the whole* favourable to this Government's interests if the issue is raised by Mysore in future.

Just then the Chief Engineer's letter at pages 4–5, current file, which summarises the case in a nutshell was received. For the reasons explained by him, the Chief Engineer suggests that it is advisable and advantageous to make a reference to Mysore asking for their consent to the construction of the proposed work thus making them understand that this Government assume that such consent is necessary under the 1924 Agreement. This Department is inclined to agree with the Chief Engineer.

The file was again sent to Legal after the receipt of the Chief Engineer's letter referred to. The views of that Department are extracted below :—

"In view of paragraph 5 of the Chief Engineer's letter, it seems desirable to make a reference to Mysore with regard to the execution of this scheme. In the event of the reply from Mysore being on the lines mentioned in paragraph 4 of the Chief Engineer's letter, the question will arise whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well. Public Works will no doubt consider this question at the proper time."

4. Orders are requested whether, in the circumstances, the consent of Mysore to the construction of the work should or should not be applied for.

D.V.K.—4-12-37. M.S.K.—6-12-37. P. MADHAVA MENON—6-12-37.

K. RAMUNNI MENON—6-12-37.

It is advisable that the consent of the Mysore Government be asked.

Y[AKUB HASAN]—13-12-37.

The draft letter may be couched in the form of information rather than one asking for consent. Let me see the draft before the file goes to His Excellency. It may be stated that the work is going on.

C. R[AJAGOPALACHARIYAR]—14-12-37.

Please see the Hon'ble the Prime Minister's note above.

Intimation is now given to Mysore under clauses (1) and (10) of the 1933 Agreement, only in cases governed by the 1892 Agreement. It has been held that the latter Agreement does not apply in this case—see paragraph 8 on page 5 ante.

The present case is governed by the 1924 Agreement. If the view is held that this Agreement covers not only the tributaries but also the sub-tributaries of the Cauvery, then the consent of Mysore should be applied for. If, on the other hand, it is considered, on a literal interpretation of the Agreement, that it does not cover sub-tributaries (as it mentions only tributaries), then no reference to Mysore is necessary. There is therefore no question of giving intimation in respect of cases governed by the 1924 Agreement. If this is done now, it will be an innovation.

The Chief Engineer's proposal is to ask for the *consent* of Mysore under the 1924 Agreement with a view to commit them to the view that the Agreement includes sub-tributaries also, and that when either Government propose to construct works on sub-tributaries, the consent of the other should be obtained. The advantages in bringing round Mysore to accept this view are explained in his letter on pages 4-5, current file. It is quite possible that if, as an innovation, *intimation* of the Hebbahalla scheme is now given, Mysore may not choose to send any reply at all, and the object aimed in addressing them would have been frustrated. On the other hand, this Government would have placed themselves in a compromising and disadvantageous position as Mysore may expect to receive similar intimation in future.

In the above circumstances the file may be re-circulated to Hon'ble Minister for Public Works and the Hon'ble the Prime Minister for orders whether the letter to Mysore should merely be one giving intimation, or whether it might be one asking for consent.

D.V.K.—21-12-37. M.S.K.—21-12-37. P. MADHAVA MENON—23-12-37.

K. RAMUNNI MENON—24-12-37.

The consent of the Mysore Government should be asked; giving information will create an inconvenient and undesirable precedent.

Y[AKUB HASAN]—30-12-37.

This has been treated as a question of legal tactics. We cannot gain any point so easily as suggested herein. The fact that we now ask for consent will not become an estoppel as against Mysore on another occasion or in another case. We shall be deemed to have taken only an unnecessary step if the view is maintained that sub-tributaries are not included. The straight forward course in the circumstances, if we do not wish to force the issue now, is to give intimation, and to await whatever reply they choose to give. Let this be done. Let His Excellency see also.

C. R[AJAGOPALACHARIYAR]—8-1-38.

[Telephonic message to the Chief Engineer (Irrigation), dated 11th January 1938.]

From the Chief Engineer (Irrigation), No. 1808/30-*B*-25, *dated* 19*th January* 1938.

The last sentence of the Chief Engineer's note may be omitted. A draft letter to the Resident in Mysore is submitted. Revenue and Legal may perhaps see before circulation to Hon'ble Minister for Public Works, Hon'ble the Prime Minister, and His Excellency.

D.V.K.—31-1-38. M.S.K.—31-1-38. P.M.M.—1-2-38.

K.R.M.—1-2-38.

REVENUE DEPARTMENT.

May be perused and passed on to Legal.

M.V.M.—2-2-38.

A | In this connection please see the Hon'ble the Prime Minister's minute on the previous page. It may perhaps be indicated in the draft that this Government have already taken steps for the commencement of the work and that the work has begun.

T. M. S. MANI—3-2-38.

B. G. HOLDSWORTH—3-2-38.

LEGAL DEPARTMENT.

Seen in this Department.

It is presumed that the intention is not to force the issue now but to adopt a *via media* so that it may be open to this Government to take up the attitude that consent is necessary if such a course is decided on later.

K. V. RAJAGOPALAN—4-2-38.

P. APPU NAIR—4-2-38.

PUBLIC WORKS DEPARTMENT.

Submitted with reference to Revenue Under Secretary's note on the previous page.

D.V.K.—8-2-38. M.S.K.—8-2-38.

Please see the note of Revenue at A on the previous page.

Please see the note of the Legal Department above. If the intention is as presumed by them we cannot very well send a letter in the form proposed by Revenue. We cannot very well inform Mysore now that we are proceeding with the work thereby implying that we do not consider any prior consent is necessary and at a subsequent stage turn round and say that in such cases prior consent of the other party is necessary. If we send a letter intimating that we are proceeding with the work we shall be committing ourselves to the position that in our view no prior consent of the other party is necessary if either party were to build such structures on sub-tributaries. It is presumed from the minutes of the Hon'ble the Prime Minister at pages 10 and 11 *ante* that the intention is not as presumed by the Legal Department. If so, the point suggested by Revenue at **A** on the previous page may be incorporated in the draft.

P. MADHAVA MENON—9-2-38.

With reference to Secretary's oral instructions, necessary addition has been made to the note proposed to be sent as an accompaniment to the letter to the Resident in Mysore stating that the work on the excavation of the supply channel was started under the special accelerated programme and is in progress. It is however submitted that, strictly speaking, the work on the excavation of the supply channel, though part of the scheme, cannot be regarded as coming within the scope of any of the three Agreements with Mysore which refer only to "new irrigation reservoirs" and "new anicuts". (Even the 1933 Agreement which clarified these expressions makes no mention of supply channels *without* anicuts.) Pages 6–7 of Notes to G.O. No. 179 I., dated 22nd January 1934, and the papers in Letter No. 219 I., dated 26th January 1935 (page 1–2 *ibid*), may be read in this connection. It is however possible to argue, as this Government did in the Bhadra Anicut case—see Letter No. 2458 I., dated 1st September 1930—that the Mysore Government are entitled to a voice in the matter so long as there is diminution of customary supply even though there is no specific provision for such works in the 1892 or other Agreements. But this contention will not avail Mysore in this particular case as there is no irrigation in Mysore territory lower down which will be affected.

As regards Under Secretary's remarks above, it seems to be the intention of the Hon'ble the Prime Minister that any course of action proposed to be taken in this case need not necessarily form a precedent for future cases.

A self-contained note is submitted.

D.V.K.—11-2-38.

Attention is invited to the self-contained note below. The draft is for approval.

K. RAMUNNI MENON—11-2-38.

NOTE.

The Hebbahalla is a stream which takes its rise in the reserve forests of the Kollegal taluk, Coimbatore district, and after a short course in British limits, it runs for about three miles through Mysore State before joining the Honhole or Swarnavathi, a tributary of the Cauvery.

2. The Chief Engineer (Irrigation) has proposed the construction of an anicut across the Hebbahalla and the excavation of a supply channel therefrom to feed a series of six tanks to improve the irrigation facilities of the Kollegal taluk which is very backward in this respect.

3. As the Hebbahalla is a sub-tributary of the Cauvery and runs partly in Madras and partly in Mysore, the question whether the consent of the Mysore Government is necessary to the construction of the anicut across it under the Agreements of 1892, 1924 and 1933 arises. The Chief Engineer has pointed out that as Schedule A to the 1892 Agreement mentions only the Honhole or Swarnavathi (and not its tributary the Hebbahalla) among the rivers the construction of anicuts across which requires the consent of Mysore, and as the Agreement is to be interpreted literally according to the opinion of the Advocate-General and the Government of India in the Bhadra Anicut case, the construction of the anicut in question does not require the consent of Mysore. The Legal Department have accepted this view.

As regards the 1933 Agreement, this is only an amplification of the 1892 Agreement in certain respects and cannot extend to ground not covered by it. As it has been held that Mysore's consent to the construction of the anicut is not necessary under the latter Agreement, it follows that such consent is not necessary under the former Agreement also.

The only question that remains for consideration is therefore whether such consent is necessary under the 1924 Agreement. Clause 10 (xiv) of this Agreement runs as follows :—

> "The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravati or Noyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir in addition to those referred to in clause (vii) of this Agreement on one of the tributaries of the Cauvery in Mysore, of a capacity not exceeding 60 per cent of the new reservoir in Madras.
>
> Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this Agreement, or the division of surplus water which, it is anticipated, will be available for division on the termination of this Agreement as provided in clause (xi)."

The point at issue arising out of this clause is whether the expression 'tributaries' occurring in it does or does not include 'sub-tributaries'. In 1929, the Government on a reference from the Chief Engineer gave a ruling in the affirmative. No legal opinion was, however, taken when this interpretation was given. The Legal Department are inclined to the opinion that as the interpretation given in 1929 seems more favourable to this Government (inasmuch as it will enable them to control the activities of Mysore on sub-tributaries also), there seems no reason why they should not take their stand on it. It might be thought that as the 1924 Agreement is supplementary to the 1892 Agreement and as it has been held that the terms in the Agreements have to be interpreted strictly and literally, the expression 'tributaries' in the 1924 Agreement should not be regarded as including sub-tributaries. But against this, it is possible to hold, as suggested by Legal, that the word 'tributaries' need not necessarily have been employed in the same sense in the two Agreements. It is only reasonable that this Government should give an interpretation that is most advantageous to them to the terms of the 1924 Agreement. It follows therefore that if the Chief Engineer can assure the Government that they are in a stronger position by accepting the interpretation that the expression 'tributaries' in the 1924 Agreement includes sub-tributaries, there is no reason why this interpretation should not be accepted till it is questioned by Mysore. On this question attention is invited to the Chief Engineer's letter at pages 4–5, current file, which summarises the case in a nutshell. For the reasons explained by him, the Chief Engineer suggests that it is advisable and advantageous to make a reference to Mysore asking for their *consent* to the construction of the proposed work thus making them understand that this Government assume that such consent is necessary under the 1924 Agreement. This means in effect that this Government are prepared to interpret the term 'tributaries' in the 1924 Agreement as including sub-tributaries.

The Legal Department on further consideration of the matter observed that in view of paragraph 5 of the Chief Engineer's letter it was desirable to make a reference to Mysore with regard to the execution of the scheme. That department added that, in the event

of the reply from Mysore being that, in their view, no reference to them (Mysore) was necessary, the question could then be considered whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well.

4. The case was submitted for orders and while Hon'ble Minister (Public Works) directed that the *consent* of the Mysore Government should be obtained, the Hon'ble the Prime Minister thought that the letter might be in the form of *information* rather than one asking for consent. On this, the question was further examined, and the following was submitted :—

"Intimation is now given to Mysore, under clauses (1) and (10) of the 1933 Agreement, only in cases governed by the 1892 Agreement. It has been held that the latter Agreement does not apply in this case—see paragraph 8 on page 5 *ante*.

"The present case is governed by the 1924 Agreement. If the view is held that this Agreement covers not only the tributaries but also the sub-tributaries of the Cauvery, then the *consent* of Mysore should be applied for. If, on the other hand, it is considered, on a literal interpretation of the Agreement, that it does not cover sub-tributaries (as it mentions only tributaries), then no reference to Mysore is necessary. There is therefore no question of giving intimation in respect of cases governed by the 1924 Agreement. If this is done now, it will be an innovation.

"The Chief Engineer's proposal is to ask for the *consent* of Mysore under the 1924 Agreement with a view to commit them to the view that the Agreement includes sub-tributaries also, and that when either Government propose to construct works on sub-tributaries, the consent of the other should be obtained. The advantages in bringing round Mysore to accept this view are explained in his letter on pages 4–5, current file. It is quite possible that if, as an innovation, *intimation* of the Hebbahalla scheme is now given, Mysore may not choose to send any reply at all, and the object aimed in addressing them would have been frustrated. On the other hand, this Government would have placed themselves in a comprising and disadvantageous position as Mysore may expect to receive similar intimation in future."

On recirculation of the file, Hon'ble Minister (Public Works) and Hon'ble the Prime Minister wrote the following minutes :—

'The consent of the Mysore Government should be asked ; giving information will create an inconvenient and undesirable precedent."

Y[AKUB HASAN]—30-12-37.

"This has been treated as a question of legal tactics. We cannot gain any point so easily as suggested herein. The fact that we now ask for consent will not become an estoppel as against Mysore on another occasion or in another case. We shall be deemed to have taken only an unnecessary step if the view is maintained that sub-tributaries are not included. The straightforward course, in the circumstances, if we do not wish to force the issue now, is to give intimation, and to await whatever reply they choose to give. Let this be done. Let His Excellency see also."

C. R[AJAGOPALACHARIYAR]—8-1-38.

A draft is accordingly submitted.

K. RAMUNNI MENON—11-2-38.

Draft letter to the Secretary to the Hon'ble the Resident in Mysore.

Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.]

I am directed to say that this Government propose proceeding with a scheme for the diversion of the waters of the Hebbahalla, a tributary of the Honhole (or Swarnavathi), which in turn is a tributary of the Cauvery.

A brief note on the scheme is enclosed.

ENCLOSURE.

The Hebbahalla Diversion Scheme.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve Forest of the Kollegal taluk, Coimbatore district. After a short course in British limits, it runs through Mysore territory for about two or three miles before it falls into the Honhole or Swarnavathi, which, in turn, falls into the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal Hole in addition to flow from their own catchment. Numerous petitions from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that a supplementary source should be provided to prevent yearly failure of crops.

Hence, to ensure better supply to these tanks and to avoid frequent heavy remissions, it is proposed to construct across the Hebbahalla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a headsluice of 2 vents of 4½′ × 3½′ each, with sill at 3·6′ below crest of anicut. This supply channel will be let into the course feeding the first tank, viz., Kottakere tank. Work on the excavation of the supply channel was started in November 1937 under the special accelerated and widespread programme of improvements to minor works of irrigation and is in progress.

The catchment of the Hebbahalla above the anicut site is 11·9 square miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area.

It is our wish to force the issue now and to have it established once for all that sub-tributaries are included in the term 'tributaries' and that consent of one party is necessary before the other party constructs irrigation works on a sub-tributary. We will lose nothing by taking our stand on this (in my opinion a correct) interpretation, for there is no valid ground for Mysore to refuse consent in the present case. But, on the other hand, if we do not ask for consent but only give information, the Mysore Government will naturally conclude that no consent was necessary in a similar case and they may construct irrigation works on a sub-tributary without giving even previous information to us. The latter course on the part of Mysore Government will be seriously detrimental to our interests. I, therefore, once again suggest that Mysore Government should be asked to give their formal consent and if they reply that no consent was necessary, we should dispute the interpretation that the term 'tributary' does not apply to a sub-tributary.

I have noticed that in the matter of an agreement or interpretation of an agreement it was always an Indian State that had an unfair advantage over Madras Government. It is time that we be more circumspect and careful in our dealings with Indian States.

Y[AKUB HASAN]—20-2-38.

As I understand, the position is this. On the whole we stand to gain by an interpretation of the 1924 Agreement to cover 'sub-tributaries'. So let us interpret it in that way in this case and ask for the consent of the Mysore Government to build the anicut on Hebbahalla. If they give the consent, they will be bound by that interpretation in future cases, wherein they may build works on sub-tributaries within their boundaries. This to me appears too easy to be successful in diplomacy or in law. The chances are (1) the Mysore Government will naturally pause to think why we have taken this somewhat curious course of asking for consent and give a wary answer which will not estop them in future interpretation, (2) even if they say that they have no objection, it will not in 'law' very far in creating an estoppel as regards future interpretation.

This being so, it appears the most dignified course to give intimation and proceed wit the work in the hope that the Mysore Government will raise no objection. I have mac some alterations in the drafts. Retype and Legal may see again before sending to H Excellency.

C. R[AJAGOPALACHARIYAR]—25-2-38.

Retyped. Hon'ble Minister (Public Works) should see before file goes to Legal.

K. RAMUNNI MENON—26-2-38.

To say that "this Government trusts there is no objection to the works being proceeded with" is an indirect way of asking Mysore Government's consent and the draft may issue after the Legal Department has examined it. To my mind, to ask for the consent in the manner originally proposed was not at all 'curious' but more 'dignified' than the present draft. However, if the same purpose is served, it matters not how it is gained provided it is in a straightforward manner.

Y[AKUB HASAN]—28-2-38.

Legal may now see.

K. RAMUNNI MENON—1-3-38.

LEGAL DEPARTMENT.

Seen in this Department. The draft is in order. It will leave it open to this Government to claim later, if need arises, that the consent of this Government should be obtained for the execution by Mysore of irrigation works on sub-tributaries running in Mysore.

K. V. RAJAGOPALAN—2-3-38.

P. APPU NAIR—3-3-38.

PUBLIC WORKS DEPARTMENT.

Submitted.

K.R.M.—4-3-38.

I am of opinion that the letter as now drafted is best under the circumstances.

C. R[AJAGOPALACHARIYAR]—23-3-38.

E[RSKINE]—28-3-38.

K.R.M.—28-3-38.

[Issued as Letter No. 652, Public Works (Irrigation), dated 29th March 1938.]

69

23-11

Letter No. 652 — PW(I)29.38

To

The Secy. to the Hon'ble
the Resident in Mysore,
Bangalore.

Sir,

Irrigation - Coimbatore district - Kollegal taluk - Hebbahalla scheme Construction of an anicut and channel.

I am directed to say that the Government of Madras proposes to proceed with a scheme for the utilisation of the waters of the Hebbahalla, a tributary of the Honhole (or Swarnavathi), which in turn is a tributary of the Cauvery. A brief note on the scheme is enclosed. I am to request that the Government of Mysore may be apprised of this and to say that this Government trusts there is no objection to the works being proceeded with.

I have etc.

One note and a blue print map.

to the C.E.(I) with reference to his letter No.1808/38 B-25 dated 19-1-1938.

to the Board of Revenue.

2 70 9244/M

THE HEBBAHALLA DIVERSION SCHEME.

Hebba Halla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal Taluk, Coimbatore District. After a short course within the limits of the Government of Madras, it runs through Mysore territory for about two or three miles before it falls into the Hone-Hole or Swarnavathi, whose waters join the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal Hole in addition to flow from their own catchment. Numerous complaints from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that there has been constant failure of crops.

To ensure better supply to these tanks it is proposed to construct across the Hebba Halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½' x 3½' each, with sill at 3.6' below crest of anicut. This supply channel will be let into the course feeding the first tank viz. Kottakera tank. The work will not adversely affect the interests of the

25/10/37 2 3 71

Mysore Government. Work on the excavation of the supply channel was started in Novr. 1937 under the special accelerated and widespread programme of improvements to minor works of irrigation and is in progress.

The catchment of the Hebba Halla above the anicut site is 11.9 square miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area.

PUBLIC WORKS **DEPARTMENT.**

Received ..... 19 *Registered* 19

Subject.

Hebba Halla Scheme - Kollegal Taluk - Coimbatore Distric

Reference: Your Telephonic Message dated 11-1-1938

plbg

VI

ENCLOSURES.
No. .....
.....
Spare copies .....

No. 1808/38-B-25

Station Madras, *Dated the* 19th January 19 38

From (Name) F.M. Dowley Esq., M.I.C.E.,

(Designation) Chief Engineer for Irrigation.

To The Secretary to the Government of Madras,

PUBLIC WORKS Department.

Sir,

I enclose a short note on the scheme and two copies of a map showing the proposals.

*this is the same as the one already sent

for CHIEF ENGINEER FOR IRRIGATION.

cl. One Note
2 Blue Prints.

21/1/38

THE HEBBA HALLA DIVERSION SCHEME.

Hebba Halla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal Taluk, Coimbatore District. After a short course in British limits, it runs through Mysore territory for about two or three miles before it falls into the Hone-Hole or Swarnavathi, which, in turn, falls into the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal Hole in addition to flow from their own catchment. Numerous petitions from the ryots of the Kollegal Taluk are being received to the effect that these tanks do not get sufficient supply and that a supplementary source should be provided to prevent yearly failure of crops.

Hence, to ensure better supply to these tanks and to avoid frequent heavy remissions, it is proposed to construct across the Hebba Halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½' x 3½' each, with cill at 3.6' below crest of anicut. This supply channel will be let into the course feeding the first tank Viz. Kottakere tank. Work on the scheme was started in Nov 1937 under the special accelerated irrigation works programme & is in progress.

The catchment of the Hebba Halla above the anicut site is 11.9 square miles. The irrigable ayacut under these tanks is about 2000 acres and it is not proposed to increase this area. It is understood that there is no irrigation in Mysore State either under the Hebba Halla below the proposed anicut site or under the Hone-Hole below the infall of the Hebba Halla.

Bhd

Tel

From U.S. Bhd (22)

To DCE(I).

Ref: Your pre. of Tel no 1808/36 B-2 of 17.12.37 Hebbahalla Scheme

Will you please say very urgently when exactly work on the supply channel was commenced under the special programme!

(Bd) Illegible

10-2-38

Illegible

Illegible

Reply of 11.2.38

On 25.11.37, the Ex Engr reported that work has actually been started on a small scale that tenders had been recd & that he was splitting up the work among three contractors.

THE HEBBAHALLA DIVERSION SCHEME.

Hebba Halla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal Taluk, Coimbatore District. After a short course in British limits, it runs through Mysore territory for about two or three miles before it falls into the Hone-Hole or Swarnavathi, which, in turn falls into the Cauvery.

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the first tank viz. Kottakere tank. Work on the excavation of the supply channel was started in November 1937 under the special accelerated and widespread programme of improvements to minor works of irrigation and is in progress

The catchment of the Hebba Halla above the anicut site is 11.9 square miles. The irrigable ayacut under these tanks is about 2000 acres and it is not proposed to increase this area.

These works will not adversely affect the interests of the Mysore Government ~~in any way~~.

PRESS SLIP.

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PW(Z) DEPARTMENT. Confidential

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Letter G.O. No. 857, dated 29.3.1938.

Number of MS. pages sent (b) Correspondence..... (b1) Notes..... 74 PW

Brief subject... Hebbalalla Swerchan Estate

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(b) Unless a note to the contrary is made against the matter, pencil entries should not be printed. The Superintendent of the Press may bring to the notice of the Registrar any instance of incomplete or careless editing.

(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper

(d) This slip should be returned by the Press to the Secretariat when proofs are furnished; it will be sent back to the Press when proofs are returned corrected and should be finally returned to the Secretariat when struck-off copies are supplied.

(e) The names of the Secretary and Members should be printed in full when they occur on the right hand side, only the first time when they appear on the left side, the initials alone being printed late

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Supt.	Supt.	Supt.

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Letter no. 652,
Dw (I) d. 29/3/38

PWD

Digest Coimbatore — Hebbanella
diversion Scheme — Letter & Memo
652 Dw (I) d. 29.3.38

The papers are being printed up —
25 copies with notes for the local records,
20 (without notes) for CE (I) & 5 for Board
Rep... Dy CE (I) may be requested to
arrange to supply direct to the Supt,
50 copies of the blue print ~~attached~~ below for being
stitched with the copies of the M.O.

S/ Rao
27/4/38 M/M

V. Ingenb
28/4/38

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30/4

ENGINEER-IN-CHIEF'S BRANCH
20 APR 1938
1640
P.W.

Dy/CE(I) to

Office of the Chief Engr(Irrign).

D.E.I

Fifty copies of the attached blue print are put up below. They may be sent to the Supt., Govt. Press, u.o.

Ans
9/5/38

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Letter

To

The Secy to the Hon'ble the Resident in Mysore Bangalore

Sir,

Irrigation — Coorg taluk — Kollegal taluk — Hebbahalla Scheme — Cost of an anicut & channel

I am directed to say that this Govt propose proceeding with a scheme for the diversion of the waters of the Hebbahalla, a tributary of the Hanhole (or Suvarnavathi), which in turn is a tributary of the Cauvery — ~~vide item 14 of Schedule to the Agreement of 1892~~ P 4 (V)

A brief note on the scheme is enclosed. ~~for the information of the Mysore Govt~~

163

MWD Proceedings 4/6/96 Pg 61 to 76

CONFIDENTIAL

Government of Madras

PUBLIC WORKS DEPARTMENT.

(Irrigation.)

Letter No. 652, 29th March 1938

Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.—Letter to the Resident in Mysore

READ—the following papers :—

I

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, to the Secretary to Government, Public Works Department, dated 7th June 1937, No. 1808/36-B-14.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve Forest of the Kollegal taluk, Coimbatore district. After a short course in British limits it runs through Mysore territory for two or three miles before it joins the Honhole or Swarnavathi which in turn falls into the Cauvery.

2. There is a proposal to construct an anicut across the Hebbahalla and take a channel from it to feed six existing tanks (vide index map enclosed). The necessity for a scheme was felt so long ago as 1921. The proposal (estimated at Rs. 2,65,000) was however, abandoned in G.O. No. 559 I., dated 19th February 1929, on financial grounds.

3. The scheme has been revived now (but on a modest scale) to ensure adequate supply to a few tanks and avoid frequent remissions in the area irrigated by them. No increase of irrigated area is proposed. The Board of Revenue has in its Proceedings No. 907/36, dated 7th September 1936, accepted the proposal to excavate the supply channel (originally estimated to cost Rs. 14,500 and subsequently revised to Rs. 15,450) under the special accelerated and widespread programme of improvements to Minor Irrigation works as it will provide work for rural population and at the same time make the tanks efficient sources of irrigation. The anicut which will be an entirely new work will cost about Rs. 9,300 or Rs. 12,106 including centage and establishment charges and will be built under a separate estimate. The complete scheme is expected to save a remission of about Rs. 1,560.

4. The point now in issue is whether the proposed anicut and supply channel to feed existing tanks can be constructed without reference to Mysore. The decision on this point rest on the interpretation of the relevant clauses of the 1924 and 1892 Agreements.

5. Clause 10 (xiv) of the 1924 Agreement provides that Madras may construct *new irrigation works* on '*Tributaries of the Cauvery in Madras*'. It is for decision whether this clause is applicable to an affluent of the Cauvery like the Hebbahalla, or whether the clause must be taken to refer only to 'tributaries running entirely in Madras'. An examination of the genesis of clause 10 (xiv) shows that the clause was introduced to meet the Madras claim that no restrictions should be placed on tributaries of the Cauvery entirely in Madras. Please vide G.O. Nos. 202-203 I., dated 10th June 1924, page 6, paragraph 8, of demi-official correspondence, Part II, and also note in paragraph 2 on page 10 of the same and paragraph 2 of letter, dated 8th January 1924, on page 15. If these notes are to be taken as expressing the intention of clause 10 (xiv) as finally drafted, the clause cannot apply to Hebbahalla which runs partly in Madras and partly in Mysore. If we go, however merely by the wording of the clause as it stands it is possible to argue that the clause covers all affluents of the Cauvery whether flowing partly or fully in Madras. In this case, Madras is free to carry out the Hebbahalla scheme without reference to Mysore in much the same way as she proposes to do the Bhavani Project.

6. If it is decided that clause 10 (xiv) does not apply, there is no clause in the 1924 Agreement specifically applicable to such cases, except the first sentence of clause 10 (xiii) which throws us back on the 1892 Agreement. Rule VI of 1892 Agreement provides that rules I to V shall apply "as far as may be" to streams flowing from Madras into Mysore. Rule II of the Agreement lays down definite limitations on Mysore Government regarding works in Mysore territory. The limitations were prescribed for safeguarding existing irrigation in Madras. It seems therefore reasonable to hold that rule VI stipulates analogous rules with reference to existing irrigation in Mysore. The Superintending Engineer, Coimbatore Circle, however reports that at present there is no irrigation in Mysore under the Hebbahalla or the Swarnavathi below the confluence of the Hebbahalla. The original Mysore draft of the 1892 Agreement prescribed certain distance limits from the Mysore-Madras frontier above which Mysore operations would be under no restriction. But the final agreement drafted after a conference on 22nd May 1891, prescribes two schedules with specific geographical limits. It will therefore be difficut to derive any limits applicable to Madras, under rule VI, by analogy. We have therefore to apply rule II as it stands to the present case. The rule prescribes in the case of Mysore that

(i) No new irrigation reservoirs may be constructed on the Schedule A streams without the consent of Madras.

(ii) No new anicuts may be built on certain of the Schedule A streams without the consent of Madras.

(iii) No new reservoirs or new anicuts may be built without the consent of Madras on streams or catchments in Schedule B fully or upto certain specified points.

Neither Hebbahalla nor the Swarnavathi into which Hebbahalla falls is in Schedule B, but Swarnavathi (or Honhole) is in Schedule A and works on it will fall either under clauses (i) and (ii) above. Hence the point at issue narrows down to "whether item 14 of Schedule A of the 1892 Agreement refers only to the main stream Swarnavathi or whether its affluent Hebbahalla is also included in its scope."

7. I request reference to the words "*main rivers in Schedule A*" in rule II of the 1892 Agreement and to the inclusion as a separate item in Schedule A of "Yagachi" a tributary of the *Hemavati* and a *sub-tributary of the Cauvery*. In view of these, it seems difficult to contend that Schedule A is applicable to sub-tributaries of the Cauvery like the Hebbahalla. I invite reference in this connection to the remarks of the Hon'ble Mr. Stokes on page 3 of G.O. No. 323 I., dated 11th June 1890, and the notes on page 3 in paragraphs 2 and 3 of G.O. No. 162 I., dated 18th February 1892, and the notes under "Cauvery catchment" on page 4 of the notes to the same Government Order. It should also be noted that the Schedule B deals with a number of small streams most of which may be considered to be tributaries or sub-tributaries of Schedule A streams. Schedule B contains however no tributaries or sub-tributaries of the Cauvery. In the circumstances it seems obvious that the streams referred to in the Schedule A of the 1892 Agreement are only the main streams so that a tributary like the Hebbahalla is not included under Schedule A. If this view is correct, Madras will be free to carry out the scheme on Hebbahalla without any reference to Mysore under rule VI of the 1892 Agreement.

8. The above interpretation is opposed to the interpretation of the term 'Cauvery and its tributaries' in paragraph 2 (*a*) of G.O. No. 1921 I, dated 4th July 1929. It is for consideration whether the inclusion of '*sub-tributaries*' in paragraph 2 (*a*) of G.O. No. 1929 is correct and if so, whether the position of Madras under rule VI of 1892 Agreement explained in paragraph 7 above will have to be modified. If Government's view is correct, and the view be interpreted to include sub-tributaries under Schedule A of the 1892 Agreement, it will be necessary for Madras and Mysore to obtain each other's consent for their schemes on sub-tributaries—Madras under clause (4) of the 1892 Agreement and Mysore under clause (3) of 1892 and 10 (viii) of the 1924 Agreement. If Madras does not in the circumstances obtain Mysore's consent to the scheme, Mysore may claim any action taken by Madras on the Hebbahalla as a precedent, and refuse to submit her schemes to Madras for scrutiny. If Madras is entitled to ask for this under the Agreement, Madras will lose more by the precedent than Mysore will. This is because our schemes on streams flowing into Mysore are so very few that the present one may almost be regarded as an exception.

9. I am of opinion that 'sub-tributaries' of the tributaries in Schedule A are dennitely excluded from the restrictions laid down in 1924 Agreement and that in any case, Madras rights on such sub-tributaries should rest entirely on the 1892 Agreement which seems definitely to exclude the sub-tributaries. Hence I think that Mysore's consent need not be obtained for the Madras Hebbahalla scheme.

10. There is another agreement to be considered. Clause 1 of the Agreement of 1933 vide G.O. No. 2796 I, dated 28th December 1933, provides for mutual intimation being given about certain classes of irrigation works which do not require the consent of the other party. The classes of works referred to in the clause are—

(i) repairs to irrigation reservoirs without increase of storage and ayacut,

(ii) repairs to existing anicut, and

(iii) construction of new anicuts, to *replace old anicuts.*

But as the scope of the mutual consent required under 1892 Agreement does not extend beyond Schedule A streams and Schedule B streams and catchments, the scope of mutual intimation to be given by either Government of such works seems equally limited to the works on the scheduled streams and catchments.

If this view is correct, and it is accepted that Schedules A and B do not include sub-tributaries not specifically mentioned in the schedules, neither consent under 1892 Agreement nor intimation under 1933 Agreement to Mysore will be necessary and the question is easily solved.

If however the view is held that the 1933 Agreement applies to other than Schedules A and B streams, a position which does not seem justified, the proposed changes to the existing tanks would fall literally speaking under definition 'Repairs to reservoirs' under rule 1 (3) of the 1892 Agreement. This view is however again open to question as in this case Madras will be building a new anicut to supply certain tanks from an altogether new source. This may put it out of the pale of a repair work and bring it under the definition of a 'New Reservoir' to which the 1933 Agreement does not apply. As a new reservoir we shall then have the same old query to answer; whether Mysore's *consent* is necessary under 1892 Agreement.

11. I am of opinion that in the circumstances explained, it is unnecessary either to obtain Mysore's consent or send intimation to Mysore of the Madras Hebbahalla scheme.

I request to be informed if Government accept these views as it seems possible to hold widely differing views in the matter. If Government agree, further action will be taken to proceed with the scheme. The channel will be excavated under the accelerated scheme and the anicut estimated for and executed separately.

II

Letter from M.R.Ry. Rai Bahadur N. NALLATHAMBI SARKARAI MANRADIYAR Avargal, Pattagar of Palayakottai, and President, District Board, Erode, to the Secretary to Government, Revenue Department, dated the 8th August 1937, D. Dis. No. 514/D.B./37.

The investigation of the scheme to construct a masonry anicut over the Hebbahalla river is said to have been going on since 1921 on the numerous petitions of Kollegal ryots that the Hampapuram group of tanks do not get proper supply from the Gundala Kalwa channel. It has been stated that these tanks suffer from November onwards and this project is stated to be mainly intended to tide over that shortage period. The scheme is said to have been abandoned, having been found unremunerative. I understand further that the Government are of opinion that the Mysore Government is to be consulted in the matter, as the Hebbahalla joins the Honhole river just within Mysore State limits. I am told that this is based on a misconception, that the area in the Mysore State the Hebbahalla could serve is negligible and that apart from which the area is not Mysore State proper but is a private property owned by the Jagirdar of Yelandur.

2. I request that the Government will be pleased to examine the whole question again, as it is an important one for the Kollegal landholders.

A copy of the District Board's Resolution in the matter is enclosed herein.

Copy to R. C. Morris, Esq., District Board Member, Honnametti Estate, Attikan Post (via) Mysore.

LETTER NO. 652 I., 29TH MARCH 1938

ENCLOSURE.

Proceedings of the Erode District Board, dated the 23rd July 1937.

Letter from R. C. Morris, Esq., District Board Member, dated the 11th May 1937, stating that the Government be asked to re-examine the Kollegal Hebbahalla Irrigation Project as it is very important one for the Kollegal landholders.

Resolution No. 381.—Government may be addressed.

N. NALLATHAMBI SARKARAI MANRADIYAR,
President, District Board.

III

Memorandum No. 1743-D./37-4, P.W., dated 11th September 1937.

[Irrigation—Kollegal taluk—Hebbahalla Diversion Scheme—Letter from the President, District Board, Erode, D. Dis. No. 514/D.B./37, dated the 8th August 1937.]

The President, District Board, is informed that the matter will be considered and orders issued in due course.

W. Scott Brown
~~K. RAMUNNI MENON~~,
Secretary to Government.

To the President, District Board, Erode.

IV

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, Madras, to the Secretary to Government, Public Works Department, dated 19th November 1937, No. 1808/36-B-22.

[Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla diversion scheme—*Reference.*—Demi-official from the Secretary to Government, Public Works Department, No. 1743-D/37-3, dated 28th August 1937.

I have examined the case further and suggest that a reference to the Mysore Government is advisable and advantageous to Madras.

2. During my discussions with the Mysore Superintending Engineer towards the close of June on some outstanding questions in regard to the Krishnarajasagara, etc., I enquired if Mysore would have any objection to this Hebbahalla scheme. The Mysore Superintending Engineer said that if no Mysore irrigation was affected, there would be no objection, and promised to look into the matter when the papers were sent to him. As already reported in paragraph 6 of my letter No. 1808/36-B-14, dated 7th June 1937, there is no irrigation in Mysore under either the Hebbahalla below the proposed anicut site, or the Swarna~~mukhi~~ (Honhole) below the confluence of the Hebbahalla. Hence, there is not likely to be any objection from Mysore. If they agree to the scheme, it means they accept the principle that sub-tributaries also come under the scope of the 1924 Agreement, and that any works on sub-tributaries can be constructed only after the consent of the other Government has been obtained, and Madras can quote this as a precedent. Obtaining Mysore's consent now will practically have no repurcussion on Madras as there are no important sub-tributaries flowing through Madras which fall into scheduled streams in Mysore. There are however many such sub-tributaries in Mysore and if this principle is accepted, Mysore reservoirs on such sub-tributaries will be counted against 45,000 m.c.ft. [vide paragraph 2 (*a*) of G.O. No. 1921 I, dated 4th July 1929].

3. If, on the other hand, Mysore object, it will be better to know of their objection before the anicut is sanctioned and taken up for execution. In this case the repurcussions on Mysore will be great, as Madras can similarly object to Mysore tapping tributaries and sub-tributaries of schedule streams. Mysore are not at all likely to object.

4. Even *if Mysore diplomatically say that a reference to them is not necessary* the position of Madras will remain unaltered. Mysore will probably say this, but we do no harm by giving them an opening to make a mistake.

5. *If no reference is now made* to Mysore, it will mean that we accept the principle that when sub-tributaries of scheduled streams are tapped by one Government, the consent of the other Government is not necessary. This will certainly be quoted by Mysore as a precedent and may give scope to them for unfettered extensions of irrigation in future.

6. I would therefore suggest that the question be referred by Government to Mysore, before final orders are passed, as we have most to gain by getting the precedent established.

Telephonic message from the Secretary to Government, Public Works Department, to the Chief Engineer (Irrigation), dated the 11th January 1938.

[Hebbahalla scheme—Kollegal taluk—Coimbatore district—Your letter No. 1808/36-B-22, dated 19th November 1937.]

~~This~~ proposed to proceed with the work and give *intimation* to Mysore. Please send a short note describing the essential features of the work and containing ~~that~~ of the technical details as are absolutely necessary for transmission to Mysore. Compare the notes sent by that Government in regard to the Doddamalur tank and the Koralkunta tank—G.Os. Nos. 2062 I., dated 1st September 1936, and 2855 I., dated 11th December 1936.

such

VI

Letter from F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, to the Secretary to Government, Public Works Department, dated the 19th January 1938, No. 1808/38-B-25.

I enclose a short note on the scheme and two copies of a map showing the proposa[illegible]

ENCLOSURE.

The Hebbahalla Diversion Scheme.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal taluk, Coimbatore district. After a short course in British limits, it runs through Mysore territory for about two or three miles before it falls into the Hone-Hole or Swarnavathi, which, in turn, falls into the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks are rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal Hole in addition to flow from their own catchment. Numerous petitions from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that a supplementary source should be provided to prevent yearly failure of crops.

Hence, to ensure better supply to these tanks and to avoid frequent heavy remissions, it is proposed to construct across the Hebba Halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½′ × 3½′ each, with sill at 3·6′ below crest of anicut. This channel will be let into the course feeding the first tank, viz., Kottakere tank.

The catchment of the Hebba Halla above the anicut sit[illegible] iare miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area. It is understood that there is no irrigation in Mysore State either under the Hebba Halla below the proposed anicut site or under the Hone-Hole below the infall of the Hebba Halla.

GOVERNMENT OF MADRAS

PUBLIC WORKS DEPARTMENT

(Irrigation)

No. 652.

From

K. RAMUNNI MENON, Esq., I.C.S.,

Secretary to Government,

Public Works Department.

To

THE HON'BLE THE RESIDENT IN MYSORE.

Dated Fort St. George, 29th March 1938.

SIR,

[Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.]

I am directed to say that the Government of Madras proposes to proceed with a scheme for the utilization of the waters of the Hebbahalla, a tributary of the Honhole (or Swarnavathi), which in turn is a tributary of the Cauvery. A brief note on the scheme is enclosed. I am to request that the Government of Mysore may be apprised of this and to say that this Government trusts there is no objection to the works being proceeded with.

I have the honour to be,

Sir,

Your most obedient servant,

K. RAMUNNI MENON,
Secretary to Government.

Enclosures:- one note and a blue print map.

Copy to the Chief Engineer (Irrigation) with reference to his letter No. 1808/38-B-25, dated 19th January 1938.
Board of Revenue.

ENCLOSURE.

The Hebbahalla Diversion Scheme.

Hebbahalla is a jungle stream having its source in the hills of Arapalayam Reserve forest of the Kollegal taluk, Coimbatore district. After a short course within the limits of the Government of Madras, it runs through Mysore territory for about two or three miles before it falls into the Hone-Hole or Swarnavathi, whose waters join the Cauvery.

The index map enclosed shows that the Kottakere and Hondrobolu tanks or rainfed, while the Doddaranganatham, Chikkaranganatham, Kongankere and Mudikondan tanks receive supplies from the Gundal Hole in addition to flow from their own catchment. Numerous complaints from the ryots of the Kollegal taluk are being received to the effect that these tanks do not get sufficient supply and that there has been constant failure of crops.

To ensure better supply to these tanks it is proposed to construct across the Hebba Halla an anicut 101 feet long with crest about 10 feet above the deepest bed and to excavate a supply channel about 2½ miles long from a head sluice of 2 vents of 4½′ × 3½′ each, with sill at 3·6′ below crest of anicut. This supply channel will be let into the course feeding the first tank, viz., Kottakere tank. The work will not adversely affect the interests of the Mysore Government. Work on the excavation of the supply channel was started in November 1937 under the special accelerated and widespread programme of improvements to minor works of irrigation and is in progress.

The catchment of the Hebbahalla above the anicut site is 11·9 square miles. The irrigable ayacut under these tanks is about 2,000 acres and it is not proposed to increase this area.

CONFIDENTIAL

PUBLIC WORKS (IRRIGATION) DEPARTMENT.

NOTES CONNECTED WITH LETTER No. 652/I., DATED 29TH MARCH 1938.

[SUBJECT.—*Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.*]

From the Chief Engineer (Irrigation), No. 1808/36-*B*-14, *dated 7th June* 1937.

The Chief Engineer's letter ~~at pages 1—3, current file,~~ explains the case fully and clearly, and the points for consideration are—

(*a*) whether the 1892 Agreement between Madras and Mysore—Schedule A—refers only to schemes on the Main tributary Honhole (or Suvarnavathi), or also to its sub-tributary the Hebbahalla;

(*b*) whether the case can be considered to fall under clause 10 (xiv) of the 1924 Agreement, having regard to both the intention and wording of the clause;

(*c*) whether the position is affected by the interpretation of the term "Cauvery and its tributaries" given by Government in paragraph 2 (*a*) of G.O. No. 1921 I., dated 4th July 1929; and

(*d*) whether under the Agreement of 1933 intimation of the proposed works (anicut and channel) should be given to Mysore and their consent obtained.

2. *Point* (*a*) *above.*—Please see paragraphs 6 and 7 of the Chief Engineer's letter ~~on pages 1-2, current file.~~ It is obvious that on a strict interpretation the 1892 Agreement as it stands does not require the consent of Mysore to be obtained for the scheme. It has often been said by the Advocate-General that an agreement between high contracting parties should be interpreted literally, and it was on this ground that the Bhadra Anicut case was decided against this Government. Please see paragraph 6 on page 2 of Notes to G.O. No. 179 I., dated 22nd January 1934, which summarises the history of this case. The Mysore Government argued that because rule II (*b*) of the 1892 Agreement mentioned anicuts across streams Nos. 4 to 9 and 14 and 15 only and because the Bhadra is No. 3 in Schedule A of that Agreement, the consent of Madras was not necessary for the construction of an anicut across it. This contention was upheld by the Government of India. In the same way, this Government may now hold that only the main tributary the Suvarnavathi (or Honhole) is mentioned in Schedule A, and not its sub-tributary, the Hebbahalla. This will be paying Mysore in their own coin, and Sir Norman Marjoribanks once remarked that Mysore should be made to understand that "what is sauce for the gander is also sauce for the goose". The Chief Engineer's view at bottom of paragraph 7 ~~on page 2 current file~~ of his letter may therefore be accepted.

P.M.M
H.R.S.—13-7-37.
W.S.B.—14-7-37.

3. *Points* (*b*) *and* (*c*) *above.*—It should be remembered in the first place that having Sir K. Srinivasa Ayyangar's scathing criticism of the 1892 Agreement fresh before them, this Government could not have intended to tighten their position further by imposing on themselves further restrictions under the 1924 Agreement. In paragraph 5 of his letter, the Chief Engineer states that, judged merely by the wording of clause 10 (xiv) of this latter Agreement, it is possible to argue that it covers all affluents of the Cauvery whether flowing partly or fully in the limits of this Presidency, and that, in this case, the proposed scheme can be carried out without reference to Mysore just as we intend to do in regard to the Bhavani Project. It is submitted that, even if the wording of the clause is taken into account, it cannot apply to Hebbahalla as the words "on the tributaries of the Cauvery in Madras" can only refer to those *entirely* in Madras limits. The case of Bhavani is different from Hebbahalla as the former lies entirely in Madras limits and is

Notes in G.O. Nos. 164 I., dated 15th May 1922, and 282 I., dated 21st November 1922.

specially mentioned in the clause. The reasons for holding the view that the consent of Mysore is not necessary (even under the proviso to the clause) in regard to the reservoir across the Bhavani is that the reservoir cannot in any way affect the supplies Mysore are entitled to under the 1924 Agreement since it will be situated below Mysore territory, and that records of the water level and regulation at the reservoir from the time it comes into operation will be available for examination when the question of the further division of the surplus comes up for consideration in 1974. The analogy of the Bhavani Project is therefore inapplicable to the Hebbahalla scheme. As, however, even under the wording of clause 10 (xiv) and its proviso, the consent of Mysore does not appear necessary for the reason that the clause does not refer to tributaries (or sub-tributaries) lying partly in Mysore and partly in Madras limits, and as, according to the Chief Engineer, the intention of the clause is not also to include such cases, it may be conceded that the clause need not be taken to apply to the present scheme. The interpretation given in G.O. No. 1921 I., dated 4th July 1929, was given mainly with reference to the question whether Mysore can build new irrigation reservoirs or sub-tributaries so long as the limit of 110,000 acres was not exceeded, and referred only to sub-clauses (iv), (vii) and (xiii) of clause 10 of the 1924 Agreement. [No mention has been made of clause 10 (xiv) which is the one under discussion now.] Mr. Evans, with whose interpretation the Government agreed, stated that we "need not" object to storage reservoirs or sub-tributaries so long as the maximum storage corresponding to 110,000 acres was not exceeded, and that there appeared to be none in question at that time—see paragraphs 3 (*a*) and 8 on pages 9-10 notes to the Government Order. In any case, as the interpretation has not been communicated to Mysore and as there has been no case so far where its correctness was tested—Mysore constructing a reservoir across a sub-tributary without our consent not having arisen—it seems that the Government Order need not be considered in the present connection. The papers in G.O. No. 1408 I., dated 12th May 1930, may also be perused. The Chief Engineer's opinion in paragraph 9 of his letter may, in the circumstances, be concurred in.

Paragraph 1 on page 12 of G.O. No. 2628 (Confdl.), dated 14th November 1936.

Quite so. Again we take our stand on the literal wording.

W.S.B.—14-7-37.

Meaning that Madras has liberty under clause 10 (xiv) to construct the work in question.

W.S.B.—14-7-37.

P.M.M. —13-7-37.

W.S.B.—14-7-37.

4. *Point (d) on page 1 ante.*—It will be seen from the papers in G.O. No. 219 I., dated 26th January 1935, that the intention was to apply clauses 1 and 10 of the 1933 Agreement only to the cases to which the 1892 Agreement applies, and it is also clear from the second sentence of clause 1 of the former Agreement that the intimation is to be given only in regard to the cases falling under the latter Agreement. Further, as has been pointed out in the last sub-paragraph under paragraph 10 of the Chief Engineer's letter ~~on page 3, current file~~, the works proposed on the Hebbahalla are in the nature of new works beyond the scope of the 1933 Agreement. The Chief Engineer's conclusion ~~at K on page 3, current file~~ seems therefore correct. It is observed that Mysore have not so far established a 'prescriptive right' under the Honhole (or Suvarnavathi) of the Hebbahalla below the confluence of the latter as at present there is no irrigation in Mysore limits under these streams. Under the proposed Madras scheme also, there is to be no extension of irrigation under the tanks fed by the new channel.

W.S.B.—14-7-37

5. In view of what has been stated in the foregoing paragraphs, the Chief Engineer's conclusion in paragraph 11 of his letter seems logical and correct. As regards the agreement in paragraph 8 of his letter that Madras's action in respect of the Hebbahalla may be taken as a precedent by Mysore, it is submitted that Mysore have not failed to exploit the drawbacks in the 1892 Agreement to their advantage (as the Bhadra anicut instance fully proves) and there is atleast good authority for maintaining that it is not permissible to go behind the explicit terms of the Agreement. The 'explicit terms' are in this rare instance favourable to Madras, and the advantage should not, it appears, be surrendered. From the note ~~on page 5 ante~~, it is however clear that the question whether sub-tributaries are included in the 1924 Agreement is one on which it is desirable to have legal opinion as the matter is bound to crop up sooner or later in relation to Mysore's activities. This was suggested by the Chief Engineer, but brushed aside by Government in 1929.

P.M.M. —13-7-37.

B

A

AW(2)

in paragraph 10 of his letter that neither Consent under the 1892 Agt nor intimation under the 1933 Agt will be necessary

in para 3 above

PWD (I)

NOTES TO LETTER NO. 652 I., 29TH MARCH 1938

6. The file may be sent to Revenue and Legal for remarks on the views of the Chief Engineer ~~in his letter at paragraphs 1-2 current file~~, and on A on the previous page.

D.V.K.—10-7-37. P. Madhava Menon ~~H. R. UZIELL~~—13-7-37.

B The note above puts the case rather more clearly than the letter in the current file. Madras seems clearly entitled to stand on the letter of the agreements and I agree with the conclusions in the note.

W. SCOTT BROWN—14-7-37.

REVENUE DEPARTMENT.

This department may agree with the Public Works Department Secretary. The file may be passed on to the Legal Department.

K.R.M.—25-7-37.

M.V.M.—19-7-37.

T. M. S. MANI—22-7-37.

K. RAMUNNI MENON—23-7-37.

LEGAL DEPARTMENT.

In paragraph 5 of his letter ~~at pages 2 and 3, current file~~, the Chief Engineer raises the question whether "tributaries" in the expression "tributaries of the Cauvery" occurring in clause 10 (xiv) of the 1924 Agreement mean "tributaries running entirely in Madras". The Chief Engineer's letter refers to two places in the correspondence between Madras and Mysore in which the negotiations which led to the agreement appear to show that the intention was to safeguard the rights of the Madras Government to irrigation in respect of tributaries lying entirely within their territories. The first of these references no doubt refers to tributaries situated in Madras territory, but the second and later reference which occurs in a note by Mysore refers to such tributaries as take *their sources entirely in Madras territory* and will consequently include tributaries which take their rise in Madras and subsequently flow into Mysore. Apart from this, we cannot, as pointed out in the note of the Public Works Department, rely upon the preliminary negotiations which led to the agreement when construing it. Under clause 10 (xiii) of the agreement, the right of the Mysore Government to construct new irrigation works on the "*tributaries of the Cauvery in Mysore*" not included in Schedule A of the 1892 Agreement has been completely safeguarded. The right of the Mysore Government has not been restricted by reason of the fact that the construction of such works on the tributaries must ultimately affect the supply of water which this Government will get from the Cauvery. Similarly, there seems to be no reason why the fact that a tributary begins in Madras and ultimately flows into the Cauvery in the Mysore State, should be held to place a restriction on the rights of this Government to utilize the waters of the tributary. The two rights conferred on the Mysore and the Madras Governments by clauses 10 (xiii) and 10 (xiv) respectively, couched as they are in the same language, must be deemed to be of the same amplitude. It follows that the right of constructing irrigation works possessed by Madras under clause 10 (xiv) cannot be limited by reason of the fact that the tributary flows into Mysore and thence joins the Cauvery.

2. The question has also been raised by the Chief Engineer whether the expression "tributary" in the 1924 Agreement includes "sub-tributaries". We have to bear in mind the fact that the Agreements of 1892 and 1924 need not necessarily have employed the expression "tributary" in the same sense. Each of the instruments must be construed primarily with reference to its own terms. So far as the 1924 Agreement is concerned, it is clear that the right conferred by clause 10 (xiii) on the Mysore Government includes a right to construct new irrigation works not only on the tributaries *not* included in Schedule A, but also on the sub-tributaries of such tributaries. Similarly, the right conferred by the latter portion of clause 10 (xiv) on the Mysore Government to construct a storage reservoir on one of the tributaries of the Cauvery in Mysore must be deemed to be exercisable not only in regard to a tributary but also in respect of a sub-tributary. As pointed out in G.O. No. 1921 I., dated 4th July 1929, the right of this Government will not in any way be affected by reason of the fact that the construction takes

M place on a sub-tributary rather than on a tributary. It could hardly have been the intention to distinguish between the two cases and to confer in respect of a tributary a right which it was intended to deny in respect of its sub-tributary. Again, under clause 10 (iv) of the 1924 Agreement, the Mysore Government are at liberty to carry out

PW(I)

NOTES TO LETTER No. 652 A., 29TH MARCH 1938

future extensions of irrigation "under the Cauvery and its tributaries" to the extent of 110,000 acres. Here again, read with clause 10 (xiii), it is clear that clause 10 (iv) applies (*a*) to the Cauvery, (*b*) its tributaries included in Schedule A, and (*c*) the sub-tributaries of the tributaries included in Schedule A. The rights of the Mysore Government have been absolutely safeguarded only in regard to the tributaries not included in Schedule A to the 1892 Agreement and the sub-tributaries of such tributaries. The right conferred by clause 10 (iv) must be deemed to apply to all other tributaries and sub-tributaries which are not within the scope of clause 10 (xiii). It could not have been the intention to permit an unlimited right of irrigation to the Mysore Government both in respect of—

(i) the sub-tributaries of the tributaries *not mentioned* in the 1892 Agreement, and

(ii) the sub-tributaries of the tributaries *mentioned* in the 1892 Agreement.

Just as a reasonable construction of clause 10 (xiii) requires us to include sub-tributaries, so also a reasonable construction of clauses 10 (iv) and (vii) must be deemed to include a reference to sub-tributaries. This is consistent with the interpretation adopted by this Government in 1929, namely, that the limitation of the extension of irrigation to 110,000 acres must apply not only to tributaries but also to the sub-tributaries of the Cauvery. This Government are concerned with the total extent of irrigation and not with where the irrigation takes place, whether under a tributary or under a sub-tributary.

B It seems to be advantageous to this Government to proceed on the footing that the reference to a tributary includes a sub-tributary in all the clauses of the agreement of 1924.

3. It can hardly be contended that the Agreement of 1924, merely because it is supplementary to the Agreement of 1892, must be deemed to apply only to the tributaries and sub-tributaries which are mentioned in the latter agreement. Clearly clause 10 (xiv) which refers specifically to the Bhavani, Amaravathi and Noyil refers to tributaries which are not referred to in the 1892 Agreement at all. We have therefore to consider the 1924 Agreement without importing into it a limitation as to its scope, viz., that it covers only the ground covered by the 1892 Agreement.

4. This department would therefore consider that clause 10 (xiv) applies to tributaries flowing into Mysore from Madras and that it applies not only to tributaries but also to sub-tributaries.

5. If however this view is not correct, that is, if we assume that the 1924 Agreement does not specifically apply to sub-tributaries, we have to examine what the position is under the 1892 Agreement. For the reasons stated by the Chief Engineer, namely, that one sub-tributary—the Yagachi—has been specifically included in Schedule A to the Agreement, while a number of sub-tributaries and minor branches have been specifically referred to in Schedule B, it is difficult to sustain the view that the 1892 Agreement applies to sub-tributaries, which have not been specifically included in either of the Schedules. The specific reference to "main rivers" in rule II of the 1892 Agreement is also consistent with the view that sub-tributaries are not included within its scope. This Government thus appear to be free of any of the restrictions imposed by the Agreement of 1892 in the case of the Hebbahalla as the Agreement does not apply to it. This department therefore agrees with the view expressed in paragraph 7 of the Chief Engineer's letter, viz., that Madras is free to carry out the scheme on the Hebbahalla as proposed, without any reference to Mysore under rule VI of the 1892 Agreement. It is presumed that rule VI applies only to the streams in Schedules A and B and that it has no application to streams which are not included in either of the Schedules.

6. With reference to paragraph 8 of the Chief Engineer's letter, it may be pointed out that the Government Order of 1929 only interpreted the agreement of 1924 and not the agreement of 1892. There is therefore no question of inconsistency between paragraph 7 of the Chief Engineer's letter and the interpretation in paragraph 2 (*a*) of the Government Order of 1929.

7. With reference to ~~the portion marked X on page 2, current file~~ the C.E.'s statement in para 8 of his letter that Mysore, it may be pointed out that Mysore are bound by clauses 10 (iv), (vi), (vii) and (viii) of the Agreement of 1924. If the expression "tributaries" in those clauses includes sub-tributaries as urged in this note, the Mysore Government would be bound to give information to this Government as regards the extension of irrigation, particulars of reservoir schemes, etc. Further, the rights of the Mysore Government will be limited to a total irrigation of 110,000 acres under the Cauvery and the tributaries included in Schedule A of the 1892 Agreement and the sub-tributaries of such tributaries. It does not therefore appear that Madras will

8. With reference to paragraph 10 of the Chief Engineer's letter, this Department agrees that the Agreement of 1933 only implments the Agreement of 1892 and cannot therefore extend to ground not covered by it. If the argument in this note is correct that the 1892 Agreement does not cover the sub-tributaries of the Honhole, there will be no scope for the application of the 1933 Agreement.

9. To sum up, whether we regard clause 10 (xiv) of the 1924 Agreement as applicable to this case or not, the rights of this Government to proceed with the present scheme on the Hebbahalla will not be subject to any restriction whatever. Neither the consent of, nor intimation to, the Mysore Government will be necessary in any case. If however we regard the matter as covered by clause 10 (xiv) of the 1924 Agreement, that is to say, if references in that Agreements to tributaries of the Cauvery include a reference to sub-tributaries also, we will be on a better footing because we can then insist that the rights of the Mysore Government under clause 10 (iv) of the 1924 Agreement cover irrigation not only under the tributaries but also under the sub-tributaries of the Cauvery. Our rights under clauses 10 (vi) and (viii) of the 1924 Agreement will also be augmented in corresponding measure. This interpretation which was adopted by this Government in 1929 seems also to be more favourable to this Government and there seems to be no reason why we should not take our stand on it.

K. V. RAJAGOPALAN—12-8-37.

P. APPU NAIR—12-8-37.

PUBLIC WORKS DEPARTMENT.

The Chief Engineer, this Department and Legal are agreed that the consent of Mysore is not necessary for carrying out the scheme, though there is difference of opinion to a certain extent as to how each of the Agreements of 1892, 1924 and 1933 are to be interpreted. In view of the Chief Engineer's letter ~~at page 8 current file~~, it is submitted that he may be informed demi-official (confidentially) that he may start work and that the position *vis a vis* Mysore will be examined further at some leisure. A draft demi-official is accordingly submitted. After its issue, the points raised in the Legal department's note will be considered and noted on.

D.V.K.—19-8-37. M.S.K.—19-8-37. P. Madhava Menon ~~H. R. Uzielli~~—20-8-37.

W. SCOTT BROWN—23-8-37.

Y[AKUB HASAN]—28-8-37.

~~[Demi-official issued as No. 1743-D/37-3, dated 28th August 1937.]~~

From the President, District Board, Erode, dated 8th August 1937, *No.* 514/37.

Please see note above. No action appears necessary on the letter from the President, District Board, Erode. A copy of the formal orders proposed to be issued may be communicated to the President, District Board, or preferably, a reply may be sent *after* the issue of orders, that the work will be taken up for execution in due course.

M.S.K.—6-9-37. D.V.K.—6-9-37.

A ~~letter~~ may be sent to the President, District Board, acknowledging receipt of his letter, and informing him that the matter will be considered. After issue of final orders the President, District Board, may be informed that the work will be executed in due course.

P. M. ~~H.R.U.~~—7-9-37.

A draft memorandum is submitted.

D.V.K.—9-9-37. M.S.K.—9-9-37. P. M. M ~~H.R.U.~~—10-9-37.

[Memorandum issued as G.O. No. 1743-D/37-4, dated 11th September 1937.]

Demi-official from W. SCOTT BROWN, Esq., I.C.S., Secretary to Government, Public Works Department, to F. M. DOWLEY, Esq., M.I.C.E., Chief Engineer for Irrigation, dated the 28th August 1937, No. 1743-D/37-3.

[Irrigation—Coimbatore—Kollegal taluk—Anicut across Hebbahalla—Your letter No. 1808-36-B-14, dated 7th June 1937.]

The Government agree generally with the view that the consent of Mysore is not necessary for the proposed work. The exact implications of the Agreements of 1892, 1924 and 1933 in so far as they are applicable to the present case are however being examined further and formal orders will be issued in due course. Meanwhile you may proceed with the work.

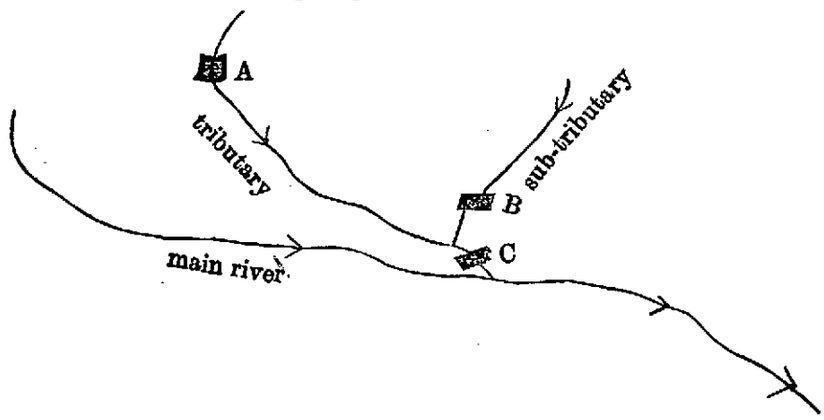
NOTES TO LETTER No. 652/I., 29TH MARCH 1938

Please see the Legal Department's note on pages 3–5 *ante*. The arguments contained herein are dealt with below.

2. *Paragraph* 1 *on page* 3 *ante*.—The conclusion of Legal may be accepted as it is based on a literal interpretation of the two clauses 10 (xiii) and 10 (xiv) of the 1924 agreement. It is unnecessary to consider whether the framers of the Agreement had anything else in their mind as we have to go by the wording of the clauses. (This is so far as *tributaries* only are concerned. Sub-tributaries are not explicitly mentioned.)

3. *Paragraph* 2 *on pages* 3–4 *ante*.—Legal observe that the fact should be borne in mind that the Agreements of 1892 and 1924 need not necessarily have employed the expression "tributary" in the same sense and that each of the instruments must be construed primarily with reference to its own terms. It is doubtful whether this view can be upheld when it has to be remembered that the 1924 Agreement has been interpreted to be *supplementary* to that of 1892. Sir K. Srinivasa Ayyangar did his best to omit reference to the 1892 Agreement when drafting the 1924 Agreement, and remarked "we cannot disguise from ourselves that we are in effect acting under the Agreement of 1892 in consenting to the construction of the Krishnarajasagara* ". The Advocate-General said in connection with the Bhadra Anicut case that the 1892 Agreement was 'ratified" in 1924. Mysore in their letter to the Government of India regarding the sharing of the Tungabhadra waters stated that the 1892 Agreement "was re-affirmed so recently as 1924 in the special Agreement apportioning the waters of the Cauvery and its tributaries". In the circumstances, it is atleast arguable whether the same expression could be interpreted differently in two Agreements which are supplementary to each other and whether in such a case the intention should not have been made explicit in the later Agreement. Again the statement of the Legal Department that it is clear that the right conferred by clause 10 (xiii) on the Mysore Government includes a right to construct new irrigation works not only on the tributaries not included in Schedule A but also in the sub-tributaries of such tributaries, seems to be based on the arguments employed in G.O. No. 1921 I., dated 4th July 1929, viz., that the right of this Government will not in any way be affected by reason of the fact that the construction takes place on a sub-tributary rather than on a tributary, and that it could hardly have been the intention to confer a right in respect of a tributary which it was intended to deny in respect of a sub-tributary. It is submitted that so far as can be seen from the discussions leading the 1892 Agreement, the main considerations for the inclusion of the streams in Schedules A and B were the size of the stream (whether tributary or sub-tributary), and the quantity it contributed to the main river. It does not seem safe to assume that the construction of a reservoir or anicut on a sub-tributary cannot abstract more water than on the tributary itself. Much seems to depend upon the position of the irrigation work to be constructed as will be evident from the following diagram :—

* See clause 10 (i) of the 1924 Agreement.



A reservoir at 'A' may not be so very detrimental to the supply in the main river as the reservoir at B in a fair-sized sub-tributary, because the draw off at A is compensated to a certain extent by flow from the catchment below it. The Legal Department argument would be all right if the reservoir were at C. If as stated by Legal, the right conferred on Mysore by the later portion of clause 10 (xiii) applies to sub-tributaries also then the position of this Government would seem to be worse as the scope of the action for Mysore would indeed be very wide.

The Legal Department seek to compare and read together clauses 10 (iv) and 10 (xiii). The former purports to give Mysore certain rights to extend irrigation within the ambit of the 1924 agreement; clause 10 (xiii) gives separate rights outside the scope of the Agreement. The two are distinct.

As regards the observation that it could not have been the intention to confer on Mysore unlimited right in respect of sub-tributaries mentioned in the 1892 Agreement a

well as those not mentioned in it, there is nothing extraordinary in this possibility when it is remembered that Mysore asked for an absolutely untrammelled right in respect of works which do not affect irrigation in Madras, and the Agreement in fact gives more than what Mysore were justly entitled to. Only such of the rivers and streams as were considered to substantially affect the supply to Madras irrigation were included within the scope of the Agreement. The conclusion that it seems advantageous to proceed on the footing that the reference to a tributary includes a sub-tributary in all clauses of the 1924 Agreement cannot it appears be accepted till it is examined how far this Government's rights will be affected *on the whole* by such an interpretation. Chief Engineer will have to be consulted on this point. So far as clause 10 (xiv) is concerned, this interpretation will enable this Government to construct only the Hebbahalla Anicut and channel as there is no other work of the kind—see last sentence of paragraph 8 ~~on page 5, current file.~~

K

4. The arguments of Legal in paragraph 3 on page 4 have been noted on above. The inclusion of Bhavani, Amaravathi and Noyil in clause 10 (xiv) has a history behind it, and has never been satisfactorily explained. Please see pages 3–9 of notes to G.O. No. 3080 I., (confidential), dated 7th December 1928.

5. The views expressed in paragraphs 5 and 6 of the Legal note may be accepted. They are in consonance with the view taken by this Department on pages 1 and 2 ante.

6. *Paragraph 7 on page 4 ante.*—As stated at K above, Chief Engineer will have to be consulted how the balance of advantage lies. Please see in this connection Mr. Stoney's remark on pages 12–13 of notes to G.O. No. 1921 I., dated 4th July 1929, and the papers in G.O. No. 1408 I., dated 12th May 1930.

7. *Paragraph 8 on page 5 ante.*—The views may be accepted.

8. *Paragraph 9 on page 5.*—If the Chief Engineer is satisfied and can assure the Government that they are in a stronger position by accepting the interpretation that the expression "tributaries" in the 1924 Agreement includes Sub-tributaries, there seem no reason why the interpretation should not be accepted till it is questioned by Mysore. The point for consideration is whether it is worthwhile to pursue the matter and force the issue. There seems no particular advantage in doing so. The worst that can happen is that Mysore may object to this Government having carried out* the work (Hebbahalla anicut and channel) without their consent on the assumption that such consent is necessary under the 1892 $\frac{\text{and}}{\text{or}}$ 1924 Agreement. It may then be simply stated that this Government did not think such consent was necessary under the Agreements with Mysore, and that, if it is considered that there will be material diminution of the supply in consequence, the quantity of water diverted from the Cauvery by the construction of the works in the Hebbahalla may be taken into account at the time the division of the surplus waters which each of the Governments would be entitled to in 1974 comes up for settlement—vide proviso to clause 10 (xiv) of the 1924 Agreement. This is more or less the line that has been adopted in the correspondence regarding the Bhavani Project.

K.R.M.—29-10-37.

* The Chief Engineer has been asked to proceed with the work—see page 5 *ante*.

9. If the above suggestion is accepted, a formal Government Order may be issued (confidentially) to the Chief Engineer to the effect that the Government are advised that under the terms of the Agreements with Mysore, the consent of that Government is not necessary for the work proposed by the Chief Engineer and that they (the works) may be proceeded with. A separate memorandum may be sent to the President, District Board, Coimbatore, saying that the Chief Engineer has arranged to carry out the work.

10. Revenue and Legal may see for remarks again.

D.V.K.—2-10-37. M.S.K.—7-10-37.

P. Madhava Menon
~~H. R. Uzielli~~—27-10-37.
K. RAMUNNI MENON—29-10-37.

REVENUE DEPARTMENT.

This department may agree with the views of the Public Works Department contained in their note at pages 6–7 *ante*. The file may be passed on to Legal.

M.V.M.—8-11-37.

T. M. S. MANI—9-11-37.
B. G. HOLDSWORTH—14-11-37.

LEGAL DEPARTMENT.

Action may be taken on the lines indicated in paragraph 9 of the note of Public Works Department above. This is in accordance with the conclusion reached in this Department's note at A on page 5 *ante*.

2. Whether we should now pursue the general question arising on the construction of 1924 Agreement, viz., whether the expression 'tributaries' occurring in it includes 'sub-tributaries' or not, is a matter for the Public Works Department. The question is obviously a contentious one on which it is possible to take more than one view. We need not force the issue now with Mysore, but it seems desirable to know where we stand. A reference may perhaps be issued to the Chief Engineer as indicated at K on page 7 *ante* as to whether or not the interpretation will be favourable to this Government's interests, especially as the question is likely to crop up again in future. It is clearly advantageous that Government should be aware of all the facts so that, if Mysore raises the issue, some definite stand can, if need be, be taken with reference to it.

K. V. RAJAGOPALAN—15-11-37.

P. APPU NAIR—16-11-37.

PUBLIC WORKS DEPARTMENT.

Please see the Legal Department note above and the letter from the Chief Engineer (Irrigation) since received. This Department suggested, and Revenue and Legal agreed, that we need not force the issue now with Mysore. In view of what the Chief Engineer now says, a reference to him as at K on page 7 *ante* seems unnecessary. For orders whether Mysore should now be addressed in the guise of asking their permission under clause 10 (xiv) of the 1924 Agreement for the construction of the anicut. (It cannot be an "intimation" under the 1933 Agreement as the work does not fall within the scope of the 1892 Agreement—See paragraph 8 on page 5 *ante*.)

2. It may be mentioned in this connection that the supply channel from the stream to feed a chain of tanks in Kollegal taluk has already been taken up for excavation under the special programme, and the anicut and head sluice are proposed to be carried out under a separate estimate which is under consideration as a Part II scheme for 1938-39. According to the Chief Engineer, the supply channel will not function effectively without the anicut and head sluice. The position will therefore be awkward if, by chance, Mysore take it into their heads to refuse consent straight away, or simply prolong the matter by starting correspondence over the interpretation of the Agreements. The point may therefore be considered whether the Chief Engineer should not be asked to hold the work on the supply channel in abeyance for the present. As regards the anicut and head sluice, the Part II scheme proposals may be pushed through on the assumption that Mysore will consent to the work in the near future—before the end of the official year 1938-39 at any rate.

Compare paragraph 9 of legal note on page 5 ante.

If it is decided to address Mysore now as suggested by the Chief Engineer it will be wise to ask the Chief Engineer to hold up work on the supply channel.

PMM —29-11-37.

The file may be circulated to Hon'ble Minister for Public Works, Hon'ble the Prime Minister and His Excellency the Governor for orders, but legal may see the Chief Engineer's letter at pages 14-15 current file, for remarks if any before circulation to Hon'ble Ministers and His Excellency. It seems unnecessary to trouble Revenue at this stage.

P. Madhava Menon

D.V.K.—25-11-37. M.S.K.—27-11-37. H. R. UZIELLI—29-11-37.

I am inclined to agree with Chief Engineer that a reference may be made now to the Mysore Government.

K. RAMUNNI MENON—29-11-37.

LEGAL DEPARTMENT.

In view of paragraph 5 of the Chief Engineer's letter, it seems desirable to make a reference to Mysore with regard to the execution of this scheme. In the event of the reply from Mysore being on the lines mentioned in paragraph 4 of the Chief Engineer's letter, the question will arise whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well. Public Works will no doubt consider this question at the proper time.

K.V.R.—30-11-37.

P.A.N.—1-12-37.

NOTES TO LETTER NO. 652 I., 29TH MARCH 1938

PUBLIC WORKS DEPARTMENT.

ions, and the linked file, may be circulated to Hon'ble Minister for Public Works, Hon'ble the Prime Minister and His Excellency the Governor for orders whether the consent of the Mysore Government should be asked for for the construction of the proposed anicut across the Hebbahalla ~~as ordered by Under Secretary~~.

A brief summarising note is put up.

D.V.K —4-12-37. M.S.K.—6-12-37. P. Madhava Menon ~~H. R. Uchila~~—6-12-37.

The note below is for orders.

2-37.

NOTE.

The Hebbahalla is a stream which takes its rise in the reserve forests of the Kollegal taluk, Coimbatore district, and after a short course in British limits, it runs for about three miles through Mysore State before joining the Honhole or Swarnavathi, a tributary of the Cauvery.

2. The Chief Engineer (Irrigation) has proposed the construction of an anicut across the Hebbahalla and the excavation of a supply channel therefrom to feed a series of six tanks to improve the irrigation facilities of the Kollegal taluk which is very backward in this respect.

3. As the Hebbahalla is a sub-tributary of the Cauvery and runs partly in Madras and partly in Mysore, the question whether the consent of the Mysore Government is necessary to the construction of the anicut across it under the Agreements of 1892, 1924 and 1933 arises. The Chief Engineer has pointed out that as Schedule A to the 1892 Agreement mentions only the Honhole or Swarnavathi (and not its tributary the Hebbahalla) among the rivers the construction of anicuts across which requires the consent of Mysore, and as the Agreement is to be interpreted literally according to the opinion of the Advocate-General and the Government of India in the Bhadra Anicut case, the construction of the anicut in question does not require the consent of Mysore. The Legal Department have accepted this view.

As regards the 1933 Agreement, this is only an amplification of the 1892 Agreement in certain respects and cannot extend to ground not covered by it. As it has been held that Mysore's consent to the construction of the anicut is not necessary under the latter Agreement, it follows that such consent is not necessary under the former Agreement also.

The only question that remains for consideration is therefore whether such consent is necessary under the 1924 Agreement. Clause 10 (xiv) of this Agreement runs as follows:—

> "The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravati or Noyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir in addition to those referred to in clause (vii) of this Agreement on one of the tributaries of the Cauvery in Mysore, of a capacity not exceeding 60 per cent of the new reservoir in Madras.
>
> Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this Agreement, or the division of surplus water which, it is anticipated, will be available for division on the termination of this Agreement as provided in clause (xi)."

The point at issue arising out of this clause is whether the expression 'tributaries' occurring in it does or does not include 'sub-tributaries'. In 1929, the Government on a reference from the Chief Engineer gave a ruling in the affirmative. No legal opinion was, however, taken when this interpretation was given. The Legal Department are inclined to the opinion that as the interpretation given in 1929 seems more favourable to this Government (inasmuch as it will enable them to control the activities of Mysore on sub-tributaries also), there seems no reason why they should not take their stand on it.

The views of this Department on the question are extracted below :—

"If the Chief Engineer is satisfied and can assure the Government that they are in a stronger position by accepting the interpretation that the expression 'tributaries' in the 1924 Agreement includes sub-tributaries, there seem no reason why the interpretation should not be accepted till it is questioned by Mysore. The point for consideration is whether it is worthwhile to pursue the matter and force the issue. There seems no particular advantage in doing so. The worst that can happen is that Mysore may object to this Government having carried out the work (Hebbahalla anicut and channel) without their consent on the assumption that such consent is necessary under the 1892 and/or 1924 Agreement. It may then be simply stated that this Government did not think such consent was necessary under the Agreements with Mysore, and that, if it is considered that there will be material diminution of the supply in consequence, the quantity of water diverted from the Cauvery by the construction of the works in the Hebbahalla may be taken into account at the time the division of the surplus waters which each of the Governments would be entitled to in 1974 comes up for settlement—vide proviso to clause 10 (xiv) of the 1924 Agreement. This is more or less the line that has been adopted in the correspondence regarding the Bhavani Project."

Legal Department agreed that the question is obviously a contentions one on which it is possible to take more than one view, that the Government need not force the issue now with Mysore, but that a reference may be made to the Chief Engineer as it was desirable to know whether or not the interpretation will be *on the whole* favourable to this Government's interests if the issue is raised by Mysore in future.

Just then the Chief Engineer's letter at page 2 current file, which summarises the case in a nutshell was received. For the reasons explained by him, the Chief Engineer suggests that it is advisable and advantageous to make a reference to Mysore asking for their consent to the construction of the proposed work thus making them understand that this Government assume that such consent is necessary under the 1924 Agreement. This Department is inclined to agree with the Chief Engineer.

The file was again sent to Legal after the receipt of the Chief Engineer's letter referred to. The views of that Department are extracted below :—

"In view of paragraph 5 of the Chief Engineer's letter, it seems desirable to make a reference to Mysore with regard to the execution of this scheme. In the event of the reply from Mysore being on the lines mentioned in paragraph 4 of the Chief Engineer's letter, the question will arise whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well. Public Works will no doubt consider this question at the proper time."

4. Orders are requested whether, in the circumstances, the consent of Mysore to the construction of the work should or should not be applied for.

D.V.K.—4-12-37. M.S.K.—6-12-37. H. R. UZIELLI—6-12-37.

K. RAMUNNI MENON—6-12-37.

It is advisable that the consent of the Mysore Government be asked.

Y[AKUB HASAN]—13-12-37.

The draft letter may be couched in the form of information rather than one askin for consent. Let me see the draft before the file goes to His Excellency. It may be stated that the work is going on.

C. R[AJAGOPALACHARIAR]—14-12-37.

GOVERNOR'S SECRETARIAT.

U.O. NOTE.

[Irrigation—Coimbatore district—Hebbahalla Stream—Construction of an anicut and channel.]

With reference to the Primier's note above, the files below may, it is submitted, be returned to Public Works Department for putting up a draft letter to the Government of Mysore before circulation to His Excellency.

H.R.—15-12-37. D.V.K.—15-12-37. G. T. BOAG—15-12-37.

PUBLIC WORKS DEPARTMENT.

Please see the Hon'ble the Prime Minister's note above ~~and the note of the Governor's Secretariat on the previos page.~~

Intimation is now given to Mysore under clauses (1) and (10) of the 1933 Agreement, only in cases governed by the 1892 Agreement. It has been held that the latter Agreement does not apply in this case—see paragraph 8 on page 5 ante.

The present case is governed by the 1924 Agreement. If the view is held that this agreement covers not only the tributaries but also the sub-tributaries of the Cauvery, then the consent of Mysore should be applied for. If, on the other hand, it is considered, on a literal interpretation of the Agreement, that it does not cover sub-tributaries (as it mentions only tributaries), then no reference to Mysore is necessary. There is therefore no question of giving intimation in respect of cases governed by the 1924 Agreement. If this is done now, it will be an innovation.

The Chief Engineer's proposal is to ask for the *consent* of Mysore under the 1924 Agreement with a view to commit them to the view that the Agreement includes sub-tributaries also, and that when either Government propose to construct works on sub-tributaries, the consent of the other should be obtained. The advantages in bringing round Mysore to accept this view are explained in his letter on page [illegible] current file. It is quite possible that if, as an innovation, *intimation* of the Hebbahalla scheme is now given, Mysore may not choose to send any reply at all, and the object aimed in addressing them would have been frustrated. On the other hand, this Government would have placed themselves in a compromising and disadvantageous position as Mysore may expect to receive similar intimation in future.

In the above circumstances the file may be re-circulated to Hon'ble Minister for Public Works and the Hon'ble the Prime Minister for orders whether the letter to Mysore should merely be one giving intimation, or whether it might be one asking for consent.

D.V.K.—21-12-37. M.S.K.—21-12-37. ~~H. R. UZIELLI—23-12-37.~~

K. RAMUNNI MENON—24-12-37.

The consent of the Mysore Government should be asked; giving information will create an inconvenient and undesirable precedent.

Y[AKUB HASAN]—30-12-37.

This has been treated as a question of legal tactics. We cannot gain any point so easily as suggested herein. The fact that we now ask for consent will not become an estoppel as against Mysore on another occasion or in another case. We shall be deemed to have taken only an unnecessary step if the view is maintained that sub-tributaries are not included. The straight forward course in the circumstances, if we do not wish to force the issue now, is to give intimation, and to await whatever reply they choose to give. Let this be done. Let His Excellency see also.

C. R[AJAGOPALACHARIAR]—8-1-38.

[Telephonic message to the Chief Engineer (Irrigation), dated 11th January 1938.]

From the Chief Engineer (Irrigation), No. 1808/30-B-25, dated 19th January 1938.

The last sentence of the Chief Engineer's note may be omitted. A draft letter to the Resident in Mysore is submitted. Revenue and Legal may perhaps see before circulation to Hon'ble Minister for Public Works, Hon'ble the Prime Minister and His Excellency.

P M M

D.V.K.—31-1-38. M.S.K.—31-1-38. ~~H.R.U.~~—1-2-38.

K.R.M.—1-2-38.

LEGAL DEPARTMENT.

Seen in this Department.

It is presumed that the intention is not to force the issue now but to adopt a *via media* so that it may be open to this Government to take up the attitude that consent is necessary if such a course is decided on later.

K. V. RAJAGOPALAN—4-2-38.

P. APPU NAIR—4-2-38.

PUBLIC WORKS DEPARTMENT.

Submitted with reference to Revenue Under Secretary's note on the previous page.

D.V.K.—8-2-38. M.S.K.—8-2-38.

Please see the note of the Legal Department above. If the intention is as presumed by them we cannot very well send a letter in the form proposed by Revenue. We cannot very well inform Mysore now that we are proceeding with the work thereby implying that we do not consider any prior consent is necessary and at a subsequent stage turn round and say that in such cases prior consent of the other party is necessary. If we send a letter intimating that we are proceeding with the work we shall be committing ourselves to the position that in our view no prior consent of the other party is necessary if either party were to build such structures on sub-tributaries. It is presumed from the minutes of the Hon'ble the Prime Minister at pages ~~9 and 10~~ *ante* that the intention is not as presumed by the Legal Department. If so the point suggested by Revenue at A on the previous page may by incorporated in the draft.

Please see the note of Revenue at A on the previous page.

~~I have not amended the draft pending orders.~~
~~H.R.U.—9-2-38.~~

P. Madhava Menon
~~H. R. UZIELL.—9-2-38.~~

With reference to Secretary's oral instructions, necessary addition has been made to the note proposed to be sent as an accompaniment to the letter to the Resident in Mysore stating that the work on the excavation of the supply channel was started under the special accelerated programme and is in progress. It is however submitted that, strictly speaking, the work on the excavation of the supply channel though part of the scheme cannot be regarded as coming within the scope of any of the three agreements with Mysore, which refer only to "new irrigation reservoirs" and "new anicuts". (Even the 1933 Agreement which clarified these expressions makes no mention of supply channels *without* anicuts.) Pages 6-7 of Notes to G.O. No. 179 I., dated 22nd January 1934, and the papers in Letter No. 219 I., dated 26th January 1935 (page 1-2 *ibid*), may be read in this connection. It is however possible to argue, as this Government did in the Bhadra Anicut case—See Letter No. 2458 I., dated 1st September 1930, that the Mysore Government are entitled to a voice in the matter so long as there is diminution of customary supply even though there is no specific provision for such works in the 1892 or other Agreements. But this contention will not avail Mysore in this particular case as there is no irrigation in Mysore territory lower down which will be affected.

As regards Under Secretary's remarks ~~on page 10 *ante*~~ above, it seems to be the intention of the Hon'ble the Prime Minister that any course of action proposed to be taken in this case need not necessarily form a precedent for future cases.

A self-contained note is submitted.

D.V.K.—11-2-38.

Attention is invited to the self-contained note below. The draft is for approval.

K. RAMUNNI MENON—11-2-38.

NOTE.

The Hebbahalla is a stream which takes its rise in the reserve forests of the Kollegal taluk, Coimbatore district, and after a short course in British limits, it runs for about three miles through Mysore State before joining the Honhole or Swarnavathi, a tributary of the Cauvery.

NOTES TO LETTER No. 652 A., 29TH MARCH 1938

2. The Chief Engineer (Irrigation) has proposed the construction of an anicut across the Hebbahalla and the excavation of a supply channel therefrom to feed a series of six tanks to improve the irrigation facilities of the Kollegal taluk which is very backward in this respect.

3. As the Hebbahalla is a sub-tributary of the Cauvery and runs partly in Madras and partly in Mysore, the question whether the consent of the Mysore Government is necessary to the construction of the anicut across it under the Agreements of 1892, 1924 and 1933 arises. The Chief Engineer has pointed out that as Schedule A to the 1892 Agreement mentions only the Honhole or Swarnavathi (and not its tributary the Hebbahalla) among the rivers the construction of anicuts across which requires the consent of Mysore, and as the Agreement is to be interpreted literally according to the opinion of the Advocate-General and the Government of India in the Bhadra Anicut case, the construction of the anicut in question does not require the consent of Mysore. The Legal Department have accepted this view.

As regards the 1933 Agreement, this is only an amplification of the 1892 Agreement in certain respects and cannot extend to ground not covered by it. As it has been held that Mysore's consent to the construction of the anicut is not necessary under the latter Agreement, it follows that such consent is not necessary under the former Agreement also.

The only question that remains for consideration is therefore whether such consent is necessary under the 1924 Agreement. Clause 10 (xiv) of this Agreement runs as follows :—

> "The Madras Government shall be at liberty to construct new irrigation works on the tributaries of the Cauvery in Madras and, should the Madras Government construct, on the Bhavani, Amaravati or Noyil rivers in Madras, any new storage reservoir, the Mysore Government shall be at liberty to construct, as an offset, a storage reservoir in addition to those referred to in clause (vii) of this Agreement on one of the tributaries of the Cauvery in Mysore, of a capacity not exceeding 60 per cent of the new reservoir in Madras.
>
> Provided that the impounding in such reservoirs shall not diminish or affect in any way the supplies to which the Madras Government and the Mysore Government respectively are entitled under this Agreement, or the division of surplus water which, it is anticipated, will be available for division on the termination of this Agreement as provided in clause (xi)."

The point at issue arising out of this clause is whether the expression 'tributaries occurring in it does or does not include 'sub-tributaries'. In 1929, the Government on a reference from the Chief Engineer gave a ruling in the affirmative. No legal opinion was, however, taken when this interpretation was given. The Legal Department are inclined to the opinion that as the interpretation given in 1929 seems more favourable to this Government (inasmuch as it will enable them to control the activities of Mysore on sub-tributaries also), there seems no reason why they should not take their stand on it. It might be thought that as the 1924 Agreement is supplementary to the 1892 Agreement and as it has been held that the terms in the Agreements have to be interpreted strictly and literally, the expression 'tributaries' in the 1924 Agreement should not be regarded as including sub-tributaries. But against this it is possible to hold, as suggested by Legal, that the word 'tributaries' need not necessarily have been employed in the same sense in the two Agreements. It is only reasonable that this Government should give an interpretation that is most advantageous to them to the terms of the 1924 Agreement. It follows therefore that if the Chief Engineer can assure the Government that they are in a stronger position by accepting the interpretation that the expression 'tributaries' in the 1924 Agreement includes sub-tributaries, there is no reason why this interpretation should not be accepted till it is questioned by Mysore. On this question attention is invited to the Chief Engineer's letter at ~~page 4~~, current file, which summarises the case in a nutshell. For the reasons explained by him, the Chief Engineer suggests that it is advisable and advantageous to make a reference to Mysore asking for their *consent* to the construction of the proposed work thus making them understand that this Government assume that such consent is necessary under the 1924 Agreement. This means in effect that this Government are prepared to interpret the term 'tributaries' in the 1924 Agreement as including sub-tributaries.

The Legal Department on further consideration of the matter observed that in view of paragraph 5 of the Chief Engineer's letter it was desirable to make a reference to Mysore with regard to the execution of the scheme. That department added that, in the event

of the reply from Mysore being that in their view no reference to them (Mysore) was necessary, the question could then be considered whether this Government should acquiesce in that position or take up the stand that tributaries in the Agreement of 1924 include sub-tributaries as well.

4. The case was submitted for orders and while Hon'ble Minister (Public Works) directed that the *consent* of the Mysore Government should be obtained, the Hon'ble the Prime Minister thought that the letter might be in the form of *information* rather than one asking for consent. On this, the question was further examined and the following was submitted :—

"Intimation is now given to Mysore, under clauses (1) and (10) of the 1933 Agreement, only in cases governed by the 1892 Agreement. It has been held that the latter Agreement does not apply in this case—see paragraph 8 on page 5 *ante*.

"The present case is governed by the 1924 Agreement. If the view is held that this Agreement covers not only the tributaries but also the sub-tributaries of the Cauvery, then the *consent* of Mysore should be applied for. If, on the other hand, it is considered, on a literal interpretation of the Agreement, that it does not cover sub-tributaries (as it mentions only tributaries), then no reference to Mysore is necessary. There is therefore no question of giving intimation in respect of cases governed by the 1924 Agreement. If this is done now, it will be an innovation.

"The Chief Engineer's proposal is to ask for the *consent* of Mysore under the 1924 Agreement with a view to commit them to the view that the Agreement includes sub-tributaries also, and that when either Government propose to construct works on sub-tributaries, the consent of the other should be obtained. The advantages in bringing round Mysore to accept this view are explained in his letter on page 4, current file. It is quite possible that if, as an innovation, *intimation* of the Hebbahalla scheme is now given, Mysore may not choose to send any reply at all, and the object aimed in addressing them would have been frustrated. On the other hand, this Government would have placed themselves in a comprising and disadvantageous position as Mysore may expect to receive similar intimation in future."

On recirculation of the file Hon'ble Minister (Public Works) and Hon'ble the Prime Minister wrote the following minutes :—

"The consent of the Mysore Government should be asked ; giving information will create an inconvenient and undesirable precedent.'

Y[AKUB HASAN]—30-12-37.

"This has been treated as a question of legal tactics. We cannot gain any point so easily as suggested herein. The fact that we now ask for consent will not become an estoppel as against Mysore on another occasion or in another case. We shall be deemed to have taken only an unnecessary step if the view is maintained that sub-tributaries are not included. The straightforward course, in the circumstances, if we do not wish to force the issue now, is to give intimation, and to await whatever reply they choose to give. Let this be done. Let His Excellency see also."

C. R[AJAGOPALACHARIAR]—8-1-38.

A draft is accordingly submitted.

K. RAMUNNI MENON—11-2-38.

Draft Letter

~~Letter from K. Ramunni Menon, Esq., I.C.S., Secretary to Government, Public Works Department, to the Secretary to the Hon'ble the Resident in Mysore, Bangalore, dated 29th March 1938, No. 652.~~

[Irrigation—Coimbatore district—Kollegal taluk—Hebbahalla scheme—Construction of an anicut and channel.]

I am directed to say that this Government propose proceeding with a scheme for the rsion of the waters of the Hebbahalla, a tributary of the Honhole (or Swarnavathi), h in turn is a tributary of the Cauvery.

A brief note on the scheme is enclosed.

~~Copy to the Chief Engineer for Irrigation with reference to his letter No. 1808/30 D-25, dated 19th January 1938.~~

NOTES TO LETTER NO. 652 I., 29TH MARCH 1938

To say that "this Government trusts there is no objection to the works being proceeded with" is an indirect way of asking Mysore Government's consent and the draft may issue after the Legal has examined it. To my mind to ask for the consent in the manner originally proposed was not at all 'curious' but more 'dignified' than the present draft. However if the same purpose is served it matters not how it is gained provided it is in a straightforward manner.

Depot

Y[AKUB HASAN]—28-2-38.

Legal may now see.

K. RAMUNNI MENON—1-3-38.

LEGAL DEPARTMENT.

Seen in this Department. The draft is in order. It will leave it open to this Government to claim later, if need arises, that the consent of this Government should be obtained for the execution by Mysore of irrigation works on sub-tributaries running in Mysore.

K. V. RAJAGOPALAN—2-3-38.
P. APPU NAIR—3-3-38.

PUBLIC WORKS DEPARTMENT.

Submitted.

K.R.M.—4-3-38.

I am of opinion that the letter as now drafted is best under the circumstances.

C. R[AJAGOPALACHARIAR]—23-3-38.

E[SKINE]—28-3-38.

K.R.M.—28-3-38.

[Issued as Letter No. 652, Public Works (Irrigation), dated 29th March 1938.]